

DECLARATION OF HILDA CANTÚ MONTÓY  
IN SUPPORT OF CLAIMANT'S  
PARAMETERS AND GUIDELINES  
*Brown Act Reform*  
Chapters 1136, 1137 and 1138, Statutes of 1993  
Chapter 32, Statutes of 1994

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MAR 01 2002

COMMISSION ON  
STATE MANDATES

I, Hilda Cantú Montoy, declare:

That I am the City Attorney for the City of Fresno, and have been for approximately six and a half years.

Since becoming the City Attorney, I have written a Municipal Law Guidebook for Elected Officials. The Guidebook is distributed to the members of the City Council and Planning Commission. It covers various subject matter areas such as the Brown Act, Public Records Act and CEQA. The Guidebook is based on state and local law but is tailored to the City of Fresno. I update this every two years, and it is also located on the City's website.

Given the fact that the membership of the City Council does not remain static, when a new councilmember is elected, I provide one-on-one training in the area of the Brown Act, as well as the Public Records Act and related issues. I also provide a copy of the Municipal Law Guidebook to the councilmember at that time.

Likewise, as changes in the composition of the Planning Commission occur, members of my Office conduct training sessions for the commission members, and include topics such as the Brown Act and Public Records Act.

These trainings are separate and distinct from the provision of periodic advice on the applicability of the Brown Act to given situations.

In the City of Fresno, due to conflicts of interest, the Retirement Boards and Health and Welfare Trust Board, are handled by outside counsel, and I am unaware of their practice in this area.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration is executed this 25<sup>th</sup> day of February, 2002 at Fresno, California.

  
Hilda Cantú Montoy

## DECLARATION OF SERVICE

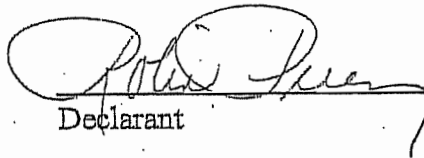
State of California  
County of Sacramento

I am at all times herein mentioned, over the age of eighteen years, and not a party to nor interested in the within matter. I am employed by MAXIMUS, INC. My business address is 4320 Auburn Blvd., Suite 2000, Sacramento, CA 95841, County of Sacramento, State of California.

That on the 1st day of March, 2002, I served the Declaration of Hilda Cantu Montoy in Support of Claimant's Parameters and Guidelines, *Brown Act Reform*, CSM-4469, on the interested parties by placing the document listed above in a sealed envelope with postage thereon fully prepaid, in the United State mail at Sacramento, California, addressed as set forth in the Attachment 1, attached hereto and incorporated herein by reference.

That I am readily familiar with the business practice of MAXIMUS, INC. for collection and processing of correspondence for mailing with the United States Postal Service; and that the correspondence would be deposited within the United States Postal Service that same day in the ordinary course of business. Said service was made at a place where there is delivery service by the United State mail and that there is a regular communication by mail between the place of mailing and the place so addressed.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration is executed this 1st day of March, 2002 at Sacramento, California.

  
Declarant

## ATTACHMENT 1

Mr. James Lombard, Principal Analyst (A-15)  
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Mr. James B. Lindholm, Jr.  
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County Government Center, Room 386  
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Mr. Jim Cunningham  
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Mr. Andy Glass, Accounting Manager  
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Office of the City Clerk  
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Mr. Leonard Kaye  
County of Los Angeles  
Auditor-Controller's Office  
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Mr. Richard Whitmore, Deputy Superintendent  
Department of Education  
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Sacramento, CA 95814

### ITEM 3 - ERRATA

#### CLAIMANT'S PROPOSED PARAMETERS AND GUIDELINES, AS MODIFIED BY STAFF

Government Code Sections 54952, 54954.2, 54954.3, 54957.1, and 54957.7

Statutes of 1986, Chapter 641

Statutes of 1993, Chapters 1136, 1137 and 1138

#### *Open Meetings Act/Brown Act Reform*

Staff recommends the following changes, identified with double strikeout and underline, to the proposed parameters and guidelines to further clarify reimbursable activities and the reimbursement options:

1. On Page 16, in IV. Reimbursable Activities, re-name "Open Session Activities" to "Agenda Preparation and Posting Activities."

A. ~~Open Session~~ Agenda Preparation and Posting Activities

2. On Page 17, in IV. Reimbursable Activities, after the bullet that begins "Permanent and Temporary Advisory Bodies", insert the following text:

Beginning January 1, 1994, the following "legislative bodies" are eligible to claim reimbursement under these parameters and guidelines for the preparation of a brief general description of closed session agenda items, using either the actual or standard time reimbursement options pursuant to section V.A.1 or 2:

- Governing board, commission, directors or body of a local agency or any board or commission thereof, as well as any board, commission, committee, or other body on which officers of a local agency serve in their official capacity.
- Any board, commission, committee, or body which exercises authority delegated to it by the legislative body.
- Planning commissions, library boards, recreation commissions, and other *permanent* boards or commissions of a local agency composed of at least a quorum of the members of the legislative body.
- Local Bodies created by state or federal statute.
- Standing Committees with less than a quorum of members of the legislative body that has a continuing subject matter jurisdiction or a meeting schedule fixed by formal action.
- Permanent & Temporary Advisory Bodies (except bodies of less than a quorum of the members of the legislative body).

3. On Page 17, in section B.2.b, correct the code section reference as follows:

- b. Approval given to its legal counsel to defend, or seek or refrain from seeking appellate review or relief, or to enter as an amicus curiae in any form of litigation, as set forth in the result of consultation under Section 43956.9; 54956.9. (Gov. Code, § 54957.1, subd. (a)(2).)
4. On Page 18, add a cross reference to section V.B.6 to the end of section IV.B.4.
- ~~6.4. Training to the new members of the only those legislative bodies that actually hold closed executive sessions, on the new closed session requirements of *Brown Act Reform*, as well as training to all new members of the legislative body on the requirements of the Brown Act prior to or upon attaining office. If such training is given to all members of the legislative body, whether newly appointed or existing members, contemporaneously, all time of the trainer and legislative members is reimbursable. Additionally, all time for preparation of training materials, obtaining materials including training videos and audio visual aids, and training the trainers to conduct the training is reimbursable. See Section V.B.6 of these parameters and guidelines.~~
5. On Page 19, insert a reference to section IV.A and a footnote (appears at the bottom of this page) as follows:
- A. Reimbursement Options for Agenda Preparation and Posting, Including Closed Session Agenda Items
- Eligible claimants may use the actual time, standard time, or flat rate reimbursement options for claiming costs incurred pursuant to section IV.A of these parameters and guidelines for agenda preparation and posting, including closed session items.<sup>1</sup> Eligible claimants must claim actual costs incurred for subsequent reporting of action taken in closed session, providing copies of documents approved or adopted in closed session, and training.
6. On Page 20, insert the same footnote mentioned above (appears at the bottom of this page) after "Flat Rate"
7. On Page 22, replace the reference to section IV with "IV.B" as follows:
6. Training
- Report the cost of training members of the legislative body to perform the reimbursable activities, as specified in section IV.B of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element B.1, Salaries and Benefits, and B.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element B.3, Contracted Services. This data, if too voluminous to be included with the claim, may be reported in a summary. However, supporting data must be maintained as described in section VI.

<sup>1</sup> The flat rate includes all of the costs for preparing and posting an agenda, including closed session agenda items. Claimants that filed reimbursement claims under the *Open Meetings Act* Program using the flat rate reimbursement option cannot file another reimbursement claim using the flat rate option for initial years costs for agenda preparation of closed session items under Brown Act Reform. Refer to sections III and IV of these parameters and guidelines.

### ITEM 3

## CLAIMANT'S PROPOSED PARAMETERS AND GUIDELINES, AS MODIFIED BY STAFF

Government Code Sections 54952, 54954.2, 54954.3, 54957.1, and 54957.7

Statutes of 1986, Chapter 641

Statutes of 1993, Chapters 1136, 1137, and 1138

### *Open Meetings Act/Brown Act Reform*

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#### EXECUTIVE SUMMARY

The *Brown Act Reform* test claim legislation requires that "legislative bodies" of local agencies comply with certain changes to the Ralph M. Brown Act, also known as the Open Meetings Act. The Commission on State Mandates (Commission) previously adopted two test claims on the Brown Act: the *Open Meetings Act* test claim (CSM-4257), and *School Site Councils and Brown Act Reform* test claim (CSM-4501).

In its Statement of Decision on the *Brown Act Reform* test claim (CSM-4469), adopted on June 28, 2001, the Commission found that Government Code sections 54952, 54954.2, 54957.1, and 54957.7, as added and amended by Statutes of 1993, chapters 1136, 1137, and 1138, constitutes a reimbursable state mandated program upon local governments within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The test claim legislation expanded the types of "legislative bodies" required to comply with the notice and agenda requirements of Government Code sections 54954.2 and 54954.3, and also required all "legislative bodies" to perform a number of additional activities in relation to the closed session requirements of the Brown Act.

#### Staff Analysis

The claimant submitted its proposed parameters and guidelines on July 26, 2001. Comments on the claimant's proposal were received from the Department of Finance (DOF), dated August 17, 2001, and the State Controller's Office (SCO), dated February 8, 2002. The claimant responded to DOF's comments on September 13, 2001, and Mr. Paul C. Minney, on behalf of Mandated Cost Systems, Inc. (MCS), an interested party, also submitted a response dated October 15, 2001. On January 23, 2002, the Commission conducted a pre-hearing conference to discuss the reimbursable activities. Following this pre-hearing, the claimant submitted five declarations to support its request that training be included as a reimbursable activity.

Staff reviewed the claimant's proposal and the comments received. Non-substantive, technical changes were made for purposes of clarification, consistency with language in recently adopted parameters and guidelines, and conformity to the Statement of Decision and statutory language.

The provisions of the proposed parameters and guidelines and substantive changes made by staff are summarized below:

1. Eligible claimants that incurred increased costs for preparing and posting an agenda, including closed session items, for the new types of legislative bodies added by Brown Act Reform, can claim reimbursement beginning January 1, 1994, which is the effective date of the test claim statutes.
2. In addition to the requirement that the agenda include a description of the items that will be discussed in closed session, the *Brown Act Reform* requires all legislative bodies to disclose in an open meeting, prior to holding any closed session, each item to be discussed in the closed session; to reconvene in open session prior to adjournment and report the actions and votes taken in closed session; and to provide copies of closed session documents. Eligible claimants that incurred increased costs to comply with the closed session requirements of *Brown Act Reform* can claim reimbursement beginning January 1, 1994.
3. Beginning with the annual reimbursement claims filed for 2001-2002 fiscal year costs, all claimants will claim costs for all reimbursable activities for *Open Meetings Act* and *Brown Act Reform* under these Parameters and Guidelines. Until that time, reimbursement for *Open Meetings Act*, must be claimed under that program as prescribed in the State Controller's claiming instructions.
4. Eligible claimants will have three options for claiming reimbursement for the cost of preparing and posting an agenda, including closed session items: 1) actual time, 2) standard time (set amount per agenda item that is based on the type of claimant), or 3) a flat rate per meeting. The basis for the standard times and the flat rate were established in amendments to Open Meetings Act Parameters and Guidelines adopted by the Commission on November 30, 2000. Only one reimbursement option can be selected for each type of meeting during a fiscal year, for claiming costs incurred for agenda preparation and posting, including closed session items.
5. In addition, the claimant proposed that all time of the trainer and legislative members is reimbursable, as well as all time for preparation of materials, for training on the new requirements of Brown Act Reform. Based on the evidence in the record, staff included ongoing training as a reimbursable activity because it constitutes a reasonable method of complying with the mandated activities. However, it is limited to the members of only those legislative bodies that actually hold closed sessions. Further, if the training encompasses more subjects than the activities related to closed session requirements, only the pro rata portion of the training is reimbursable.
6. Eligible claimants must claim actual costs incurred for subsequent reporting of actions taken in closed session, providing copies of documents approved or adopted in closed session, and training, regardless of the reimbursement option they chose to claim costs for agenda preparation and posting.

On February 27, 2002, the Commission conducted a workshop for parties to meet and discuss parameters and guidelines boilerplate language for local agencies, which includes sections V through IX, and the preamble to section IV. For purposes of consistency, staff modified

sections VII through IX, and the preamble to section IV, to match the boilerplate language in the *Sex Offenders: Disclosure by Law Enforcement Officers* Parameters and Guidelines set for the March 28, 2002 Commission hearing.

Boilerplate modifications were also made for sections V. Claim Preparation and Submission, and VI. Supporting Data. However, these sections do not match standard boilerplate language because of the reimbursement options.

### **Staff Recommendation**

Staff recommends that the Commission adopt the claimant's proposed parameters and guidelines, as modified by Commission staff, beginning on page 13.<sup>1</sup>

Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

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<sup>1</sup> See also Attachment A, Claimant's Proposed Parameters and Guidelines, as Modified by Commission Staff, without track changes.



## Claimant

City of Newport Beach

## Chronology

- 06/28/01      Commission on State Mandates (Commission) adopted Statement of Decision<sup>2</sup>
- 07/26/01      Claimant submitted proposed parameters and guidelines<sup>3</sup>
- 08/17/01      The Department of Finance (DOF) submitted comments<sup>4</sup>
- 09/13/01      Claimant submitted response to DOF's comments<sup>5</sup>
- 10/15/01      Mr. Paul C. Minney, on behalf of Mandated Cost Systems, Inc. (MCS),  
interested party, submitted comments<sup>6</sup>
- 01/23/02      Commission conducted a pre-hearing conference to discuss the reimbursable  
activities
- 02/08/02      The State Controller's Office (SCO) submitted comments<sup>7</sup>
- 02/13/02      Claimant submitted four declarations to support its request that training be  
included as a reimbursable activity<sup>8</sup>
- 02/27/02      Commission conducted a boilerplate language workshop
- 03/01/02      Claimant submitted an additional declaration supporting its request that training  
be included as a reimbursable activity<sup>9</sup>
- 03/18/02      Commission issued staff analysis

## Summary of the Mandate

Government Code sections 54952, 54954.2, 54957.1 and 54957.7, require that "legislative bodies" of local agencies comply with certain changes to the Ralph M. Brown Act, also known as the Open Meetings Act.

On June 28, 2001, the Commission adopted its Statement of Decision on the *Brown Act Reform* (CSM-4469) test claim. The Commission found that Government Code sections 54952, 54954.2, 54957.1, and 54957.7, as added and amended by Statutes of 1993, chapters 1136, 1137, and 1138, constitutes a reimbursable state mandated program upon local governments within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

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<sup>2</sup> Exhibit A

<sup>3</sup> Exhibit B

<sup>4</sup> Exhibit C

<sup>5</sup> Exhibit D

<sup>6</sup> Exhibit E

<sup>7</sup> Exhibit F

<sup>8</sup> Exhibit G

<sup>9</sup> Exhibit G

The test claim legislation expanded the types of "legislative bodies" required to comply with the notice and agenda requirements of Government Code sections 54954.2 and 54954.3, to include:

- Local Bodies created by state or federal statute.
- Standing Committees with less than a quorum of members of the legislative body that has a continuing subject matter jurisdiction or a meeting schedule fixed by formal action.
- Permanent & Temporary Advisory Bodies (except bodies of less than a quorum of the members of the legislative body).

It also required all "legislative bodies" to perform a number of additional activities in relation to the closed session requirements of the Brown Act, as follows:

- To include a brief general description on the agenda of all items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. (Gov. Code, § 54954.2, subd. (a).)
- To disclose in an open meeting, prior to holding any closed session, each item to be discussed in the closed session. (Gov. Code, § 54957.7, subd. (a).)
- To reconvene in open session prior to adjournment and report the actions and votes taken in closed session for the five items identified in Government Code section 54957.1, subdivision (a)(1-4, 6). (Gov. Code, § 54957.7, subd. (b).)
- To provide copies of closed session documents as required. (Gov. Code, § 54957.1, subd. (b) and (c).)

The Commission previously adopted two test claims on the Brown Act:

#### Open Meetings Act

On March 23, 1988, the Commission adopted the *Open Meetings Act* test claim (CSM-4257). Statutes of 1986, chapter 641, added Government Code section 54954.2 to require that the legislative body of the local agency, or its designee, post an agenda containing a brief general description of each item of business to be transacted or discussed at the regular meeting, subject to exceptions stated therein, specifying the time and location of the regular meeting and requiring that the agenda be posted at least 72 hours before the meeting in a location freely accessible to the public. The following types of "legislative bodies" were eligible for reimbursement:

- Governing board, commission, directors or body of a local agency or any board or commission thereof, as well as any board, commission, committee, or other body on which officers of a local agency serve in their official capacity.
- Any board, commission, committee, or body that exercises authority delegated to it by the legislative body.

- Planning commissions, library boards, recreation commissions, and other permanent boards or commissions of a local agency composed of at least a quorum of the members of the legislative body.

Statutes of 1986, chapter 641 also added Government Code section 54954.3 to provide an opportunity for members of the public to address the legislative body on specific agenda items or any item of interest that is within the subject matter jurisdiction of the legislative body, and this opportunity for comment must be stated on the posted agenda.

#### School Site Councils and Brown Act Reform

On April 27, 2000, the Commission approved the *School Site Councils and Brown Act Reform* test claim (CSM-4501). This test claim was based on Government Code section 54954 and Education Code section 35147, which addressed the application of the open meeting act provisions of the Brown Act to specified school site councils and advisory committees of school districts. On March 29, 2001, the Commission adopted the parameters and guidelines for this mandate.

#### **Staff Analysis**

Staff reviewed the claimant's proposal and the comments received. Non-substantive, technical changes were made for purposes of clarification, consistency with language in recently adopted parameters and guidelines, and conformity to the Statement of Decision and statutory language.

Substantive modifications were made to the claimant's proposed parameters and guidelines, as discussed below:

#### Heading

Under these proposed parameters and guidelines, eligible claimants would submit combined annual reimbursement claims for *Brown Act Reform* and *Open Meetings Act* beginning fiscal year 2001-2002. Thus, all of the legislative bodies identified as eligible claimants can claim reimbursement for all of the reimbursable activities identified in section IV of the parameters and guidelines, except as limited for training. Therefore, "Open Meetings Act" was included in the title and Statutes of 1986, chapter 641, and Government Code section 54954.3 with the test claim legislation.<sup>10</sup>

Further, the test claim submitted by the claimant stated: "The provisions of Chapter 32, Statutes of 1994, did not effect the scope of the State mandated activities and costs described in this test claim." The DOF contended that it was essentially clean-up legislation and it did not impose any reimbursable state-mandated costs. The Commission found that Statutes of 1994, chapter 32 did not impose a reimbursable state mandated program. Accordingly, the reference was deleted.

#### **II. Eligible Claimants**

The claimant's proposal includes counties, cities, a city and county, and special districts, as defined in Government Code section 17518, as eligible claimants. The SCO and MCS maintained that school districts are also eligible claimants for two reasons: 1) The *Open*

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<sup>10</sup> Government Code sections 17530 and 17553.

*Meetings Act* Parameters and Guidelines recognized school districts as eligible claimants, and 2) the Statement of Decision for *Brown Act Reform* included school districts in its definition of a local agency.

Specifically, the Statement of Decision states:

As used in the Ralph M. Brown Act, "local agency" means a county, city, whether general law or chartered, city and county, town, *school district*, municipal corporation, district, political subdivision, or any board, commission, or agency thereof, or other local public agency. (Gov. Code, §54951.) (Emphasis added.)<sup>11</sup>

Accordingly, this section was modified to include school districts as eligible claimants.

Staff clarified that commencing with the annual claims filed for costs incurred in the 2001-2002 fiscal year, all "legislative bodies" are eligible to claim reimbursement for all of the identified reimbursable activities, except as limited for training.

### III. Period of Reimbursement

The claimant filed the test claim for the *Brown Act Reform* on December 29, 1994. Thus, the claimant's proposal identifies a reimbursement period beginning on or after July 1, 1993. However, Statutes of 1993, chapters 1136, 1137, and 1138, became effective January 1, 1994. Therefore, costs incurred on or after January 1, 1994, for compliance with the *Brown Act Reform* are reimbursable.

In addition, as suggested by the SCO, staff clarified that costs incurred for the *Open Meetings Act* program must be claimed as prescribed in the Controller's Claiming Instructions No. 2000-15 and 2000-16 for local agencies and schools, respectively. Annual claims, commencing with the 2001-2002 fiscal year, should include all costs for Open Meetings Act and Brown Act Reform.<sup>12</sup>

### IV. Reimbursable Activities

The claimant's proposal included two subsections: A) Scope of the Mandate, and B) Reimbursable Activities. The "Scope of the Mandate" summarized the reimbursable activities. This subsection was deleted because it was repetitive.

The following substantive modifications were made to the reimbursable activities section:

- The claimant proposed five reimbursable activities. The SCO suggested separating the activities required by the Open Meetings Act from those required by the Brown Act Reform. However, all of the proposed activities are required by the Brown Act Reform. Instead, the "Open Session Activities" were separated from the "Closed Session Activities." Also, staff specified the types of "legislative bodies" that are eligible to claim reimbursement for the increased costs to prepare and post an agenda pursuant to Government Code sections 54954.2 and 54954.3, and for the increased costs of subsequent reporting requirements and providing copies of documents approved or adopted in closed session pursuant to Government Code sections 54957.1 and 54957.7.

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<sup>11</sup> Exhibit A, footnote 1 on bates page 42.

<sup>12</sup> The Parameters and Guidelines for School Site Councils and Brown Act Reform (CSM-4501) are not included in these Parameters and Guidelines.

- Consistent with the Statement of Decision, "Disclose in an open meeting, prior to holding any closed session, each item to be discussed in the closed session," was added as a closed session activity pursuant to Government Code section 54957.7, subdivision (a).
- The claimant proposed, "Increased costs to include subsequent reporting requirements of action taken in closed session..." This was followed by six subsequent reporting requirements. The DOF argued that this activity was not identified in the Statement of Decision and should therefore be deleted. In its response to the DOF's comments, the claimant maintained that the Commission's Statement of Decision recognized the requirements to "report out" certain actions taken in closed session. At the January 23, 2002 pre-hearing conference, DOF agreed that these activities were consistent with the Statement of Decision.

Consistent with statutory language, staff modified the claimant's proposal as follows: "Reconvene in open session prior to adjournment to make any disclosures required by Section 54957.1 of action taken in the closed session, including items as follows:."

- The claimant proposed the following item as a subsequent reporting requirement: "Action taken to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee in closed session as set forth in Section 54957." The SCO recommended that this item be deleted since the Statement of Decision specifically determined this to be required under prior law. MCS supported this position. Therefore, this item was deleted to be consistent with the Statement of Decision.

- The claimant also proposed training as follows:

Training to the new members of the legislative body on the new requirements of *Brown Act Reform*, as well as training to all new members of the legislative body on the requirements of the Brown Act prior to or upon attaining office. If such training is given to all members of the legislative body, whether newly appointed or existing members, contemporaneously, all time of the trainer and legislative members is reimbursable. Additionally, all time for preparation of training materials, obtaining materials including training videos and audio visual aids, and training the trainers to conduct the training is reimbursable.

The DOF asserted that training should be deleted because it is not identified as a reimbursable activity in the Statement of Decision. MCS acknowledges that the Statement of Decision does not specifically provide for reimbursement related to training. However, MCS argues that the Commission has recognized training in the past as necessary to properly effectuate the mandated program.

The claimant contends that training is reasonably necessary to comply with the mandated activities since most membership of boards and commissions do not remain static over time. The claimant notes that there are substantial penalties for failure to properly comply with the requirements of the Brown Act, including having all actions taken in violation of the Act being deemed void. The claimant also argues that most board and commission members are laypersons and not attorneys. Therefore, in order

for them to remain aware of the technical requirements of the Act, training is imperative. The claimant submitted five declarations in support of its position. A declaration by Kathleen Bales-Lange, Tulare County Counsel, states:

The reason for the subsequent training is that the membership of the various boards and commissions does not remain static. The membership changes as terms expire, or there are unscheduled vacancies due to resignations or incapacity...[¶] The requirements of the Brown Act are quite technical, and the penalties for violations are quite onerous. Thus, not only do new board and commission members need to be trained on the requirements of the Brown Act, but with the passage of time, members may forget the requirements and need refresher training.<sup>13</sup>

Therefore, based on the evidence in the record, staff included ongoing training on the closed session requirements of *Brown Act Reform* because it constitutes a reasonable method of complying with the mandated activities.<sup>14</sup> However, it is limited to the members of only those legislative bodies that actually hold closed executive sessions.

In addition, the claimant proposed that *all* time of the trainer and legislative members is reimbursable, as well as *all* time for preparation of materials. The word "all" was deleted because only the portion of training specifically related to closed session requirements is reimbursable.

#### V. Claim Preparation and Submission

The claimant's proposal included three reimbursement options for agenda preparation and posting, including closed session agenda items. These are the same options that are included in the amendment to the *Open Meetings Act* Parameters and Guidelines that was adopted by the Commission on November 30, 2000.

1. Actual Time – Eligible claimants can claim their actual costs.
2. Standard Time – This component has three parts, outlined below, because of differences between eligible claimants. The standard time would not apply to standard agenda items such as call-to-order, flag salute, public comments, and adjournment.<sup>15</sup>

Main Legislative Body Meetings of Counties and Cities - For each meeting, the number of agenda items would be multiplied by 30 minutes, and then by the blended productive hourly rate of the involved employees.<sup>16</sup>

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<sup>13</sup> Exhibit G, bates page 115.

<sup>14</sup> California Code of Regulations, title 2, section 1183.1.

<sup>15</sup> The standard times adopted for *Open Meetings Act* Parameters and Guidelines, as amended on November 30, 2000, were based on samples of *Open Meetings Act* reimbursement claims filed by cities, counties, and special districts with the SCO. The standard times for school districts were based on data collected by the Education Cost Mandated Network and San Diego Unified School District from reimbursement claim data that was on file with the SCO.

<sup>16</sup> The blended productive hourly rate is calculated by determining the percentage of time spent by persons on the reimbursable activities and multiplying the productive hourly rate (including salaries and benefits) for each person times the percentage of time spent by that person.

Special District Meetings, and County and City Meetings Other than the Main Legislative Body - For each meeting, the number of agenda items would be multiplied by 20 minutes, and then by the blended productive hourly rate of the involved employees.

School and Community College Districts and County Offices of Education - For each meeting, the number of agenda items would be multiplied times the minutes shown below according to enrollment, and then by the blended productive hourly rate of the involved employees:

- Enrollment of 20,000 or more = 45 minutes per agenda item
  - Enrollment of 10,000 to 19,999 = 15 minutes per agenda item
  - Enrollment of less than 10,000 = 10 minutes per agenda item
  - County Office of Education = 45 minutes per agenda item
3. Flat Rate - Eligible claimants could claim \$90.10 per meeting.<sup>17</sup> Adjustments to this uniform cost allowance would be made annually based on the Implicit Price Deflator.<sup>18</sup>

Only one reimbursement option can be selected for each type of meeting during a fiscal year, for claiming costs incurred for agenda preparation and posting, including closed session items. Claimants cannot choose different methods within a fiscal year, but they can switch the following year.

The Commission may adopt an allocation formula or uniform cost allowance in parameters and guidelines.<sup>19</sup> The Commission's regulations provide that "whenever possible, an allocation formula or uniform allowance should be used as the basis for reimbursement."<sup>20</sup> The basis for the flat rate and the standard times was previously established in the *Open Meetings Act* Parameters and Guidelines, as amended on November 30, 2000. The activities of developing and posting the agenda are the same for *Open Meetings Act* and *Brown Act Reform*, except that the proposed *Brown Act Reform* Parameters and Guidelines include closed session agenda items. Therefore, staff finds that adopting standard times and a flat rate in these parameters and guidelines, which are based on rates previously adopted for *Open Meetings Act* Parameters and Guidelines, is appropriate. Further, under these proposed parameters and guidelines, eligible claimants would submit combined annual reimbursement claims for *Brown Act Reform* and *Open Meetings Act* beginning fiscal year 2001-2002.

Staff noted that claimants must claim actual costs incurred for subsequent reporting of action taken in closed session, providing copies of documents approved or adopted in closed session, and training, regardless of the reimbursement option they chose to claim costs for agenda preparation and posting.

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<sup>17</sup> The \$100 flat rate adopted in the *Open Meetings Act* Parameters and Guidelines for fiscal year 1997-1998 was discounted using the implicit price deflator to arrive at the flat rate of \$90.10 for fiscal year 1993-1994.

<sup>18</sup> Government Code section 17523.

<sup>19</sup> Government Code section 17557, subdivision (d).

<sup>20</sup> California Code of Regulations, title 2, section 1183.1.

### Sections V through IX

On February 27, 2002, the Commission conducted a workshop for parties to meet and discuss parameters and guidelines boilerplate language for local agencies, which includes sections V through IX, and the preamble to section IV. For purposes of consistency, staff modified the following sections to match the boilerplate language in the *Sex Offenders: Disclosure by Law Enforcement Officers* Parameters and Guidelines set for the March 28, 2002 Commission hearing: VII. Offsetting Savings and Reimbursements, VIII. State Controller's Office Required Certification, IX. Parameters and Guidelines Amendments, and the preamble to section IV.

Boilerplate modifications were also made for sections V. Claim Preparation and Submission, and VI. Supporting Data. However, these sections do not match standard boilerplate language. As discussed above, section V includes three reimbursement options for agenda preparation and posting, including closed session agenda items; and section VI specifies how the indirect cost rate is applied in the blended productive hourly rate calculation.

### **Staff Recommendation**

Staff recommends that the Commission adopt the claimant's proposed parameters and guidelines, as modified by Commission staff, beginning on page 13.<sup>21</sup>

Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

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<sup>21</sup> See also Attachment A, Claimant's Proposed Parameters and Guidelines, as Modified by Commission Staff, without track changes.

## CLAIMANT'S PROPOSED PARAMETERS AND GUIDELINES, AS MODIFIED BY STAFF

Government Code Sections 54952, 54954.2, 54954.3, 54957.1, and 54957.7

Statutes of 1986, Chapter 641

Statutes of 1993, Chapters 1136, 1137 and 1138, Statutes of 1993

Chapter 32, Statutes of 1994

### Open Meetings Act/Brown Act Reform

#### I. SUMMARY AND SOURCE OF THE MANDATE

Government Code, sections 54952, 54954.2, 54957.1 and 54957.17, require that "legislative bodies" of local agencies comply with certain changes to the Ralph M. Brown Act, also known as the Open Meetings Act. ~~(Government Code, Sections 54950 *et seq.*, hereinafter referred to as the "Brown Act")~~ Section 54952 clarifies and changes the definition of "legislative body"; section 54954.2 requires closed session items to be listed on the meeting agenda; section 54957.1 requires the reporting of closed session items after the closed session and the provision of closed session documents; and section 54957.7 requires the disclosure of certain closed session items both prior to and after the closed session.

On May 24, 2000 ~~June 28, 2001~~, the Commission on State Mandates (Commission) adopted its Statement of Decision that the test claim legislation on the Brown Act Reform test claim (CSM-4469). The Commission found that Government Code sections 54952, 54954.2, 54957.1, and 54957.7, as added and amended by Statutes of 1993, chapters 1136, 1137, and 1138, constitutes a reimbursable state mandated program upon local governments within the meaning of Article XIII\_B, Section 6 of the California Constitution and Government Code, section 17514. The test claim legislation expanded the types of "legislative bodies" required to comply with the notice and agenda requirements of Government Code sections 54954.2 and 54954.3, to include:

- Local Bodies created by state or federal statute.
- Standing Committees with less than a quorum of members of the legislative body that has a continuing subject matter jurisdiction or a meeting schedule fixed by formal action.
- Permanent & Temporary Advisory Bodies (except bodies of less than a quorum of the members of the legislative body).

It also required all "legislative bodies" to perform a number of additional activities in relation to the closed session requirements of the Brown Act, as follows:

- To include a brief general description on the agenda of all items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. (Gov. Code, § 54954.2, subd. (a).)

- To disclose in an open meeting, prior to holding any closed session, each item to be discussed in the closed session. (Gov. Code, § 54957.7, subd. (a).)
- To reconvene in open session prior to adjournment and report the actions and votes taken in closed session for the five items identified in Government Code section 54957.1, subdivision (a)(1-4, 6). (Gov. Code, § 54957.7, subd. (b).)
- To provide copies of closed session documents as required. (Gov. Code, § 54957.1, subd. (b) and (c).)

The Commission previously adopted two test claims on the Brown Act:

### 1. Open Meetings Act

On March 23, 1988, the Commission adopted the *Open Meetings Act* test claim (CSM-4257). Statutes of 1986, chapter 641, added Government Code section 54954.2 to require that the legislative body of the local agency, or its designee, post an agenda containing a brief general description of each item of business to be transacted or discussed at the regular meeting, subject to exceptions stated therein, specifying the time and location of the regular meeting and requiring that the agenda be posted at least 72 hours before the meeting in a location freely accessible to the public. The following types of "legislative bodies" were eligible for reimbursement:

- Governing board, commission, directors or body of a local agency or any board or commission thereof, as well as any board, commission, committee, or other body on which officers of a local agency serve in their official capacity.
- Any board, commission, committee, or body which exercises authority delegated to it by the legislative body.
- Planning commissions, library boards, recreation commissions, and other permanent boards or commissions of a local agency composed of at least a quorum of the members of the legislative body.

Statutes of 1986, chapter 641 also added Government Code section 54954.3 to provide an opportunity for members of the public to address the legislative body on specific agenda items or any item of interest that is within the subject matter jurisdiction of the legislative body, and this opportunity for comment must be stated on the posted agenda.

### 2. School Site Councils and Brown Act Reform

On April 27, 2000, the Commission approved the *School Site Councils and Brown Act Reform* test claim (CSM-4501). This test claim was based on Government Code section 54954 and Education Code section 35147, which addressed the application of the open meeting act provisions of the Brown Act to specified school site councils and advisory committees of school districts.<sup>22</sup>

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<sup>22</sup> The parameters and guidelines for the *School Site Councils and Brown Act Reform* test claim are not included in these parameters and guidelines.

## II. ~~PRIOR TEST CLAIMS~~

On March 23, 1988, the Commission adopted the *Open Meeting Act* test claim that added Government Code, sections 54954.2 and 54954.3 to the Brown Act. Section 54954.2 required the "legislative bodies" of local agencies for the first time to prepare and post agendas for public meetings at least 72 hours prior to the scheduled meeting. In addition, the agenda was to contain a brief description of each item to be discussed. Local agencies were also prohibited from taking action on any item that was not on the agenda. Section 54954.3 required that each agenda provide the public with the opportunity to address the legislative body during the meeting.

On April 27, 2000, the Commission approved the *School Site Councils and Brown Act Reform* test claim, which was based on Government Code, section 54954 and Education Code, Section 35147 addressed the application of the open meeting act provisions of the Brown Act to specified school site councils and advisory committees of school districts.

## III. ELIGIBLE CLAIMANTS

Any Counties, cities, a city and county, school and or special districts, as defined in Government Code, section 17518 are eligible claimants. that incurs increased costs as a result of this reimbursable state mandated program is eligible to claim reimbursement of those costs.

## IIIV. PERIOD OF REIMBURSEMENT

Section 17557 of the Government Code section 17557, prior to its amendment by Statutes of 1998, Chapter 681 (effective September 22, 1998), stated that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The test claim for this mandate *Brown Act Reform* was filed on December 29, 1994. Statutes of 1993, chapters 1136, 1137, and 1138, became effective January 1, 1994. Therefore, costs incurred for Chapters 1136, 1137 and 1138, Statutes of 1993 and Chapter 32, Statutes of 1994 are eligible for reimbursement on or after July 1, 1993. on or after January 1, 1994 for compliance with the *Brown Act Reform* mandate are eligible for reimbursement.

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561, subdivision (d)(1) of the Government Code, all claims for reimbursement of initial years' costs shall be submitted within 120 days of notification by the State Controller of the issuance of claiming instructions.

Claimants may use actual time, standard time or the flat rate specified in section VII for costs incurred beginning in fiscal year 1993-94, for those costs related to reimbursement for agenda preparation and posting, including closed session items. Claimants must use the actual time methodology for claiming costs related to training, subsequent reporting of action taken in closed session, and providing copies of documents approved or adopted in closed session, beginning in fiscal year 1993-94.

If total costs for a given fiscal year do not exceed \$200, no reimbursement shall be allowed except as otherwise allowed by Government Code, section 17564.

Initial years' costs shall not include any costs ~~which have been claimed~~ that were claimable or reimbursed pursuant to *Open Meetings Act*, pursuant to Parameters and Guidelines as amended on December 4, 1991 or November 30, 2000. Reimbursement for these costs must be claimed as prescribed in the Controller's Claiming Instructions No. 2000-15 and 2000-16 for local agencies and schools, respectively.

Annual claims, commencing with the 2001-2002 fiscal year, shall include all costs for *Open Meetings Act* ~~as well as~~ and *Brown Act Reform*.

#### IV. REIMBURSABLE ACTIVITIES

##### A. Scope of Mandate

~~Local agencies shall be reimbursed for the increased costs which they are required to incur to prepare and post, at a site accessible to the public and at least 72 hours before the meeting, a single agenda containing a brief general description of each item of business to be transacted or discussed at any one regular meeting of the legislative body, and citing the time and location of the regular meeting. The agenda shall also include items to be discussed in closed session, as required by law. Further, every agenda for a regular meeting must state that there is an opportunity for members of the public to address the legislative body on items of interest to the public that are within the subject matter jurisdiction of the legislative body, subject to the exceptions stated therein. Additionally, every session which has a closed session shall include the reporting requirements and disclosures pursuant to Government Code, Section 54957.1 of the action taken in closed session. Additionally, documentation provided from closed session within specified timelines is also included. Because of the technical requirements of the Brown Act, training on *Brown Act Reform* as well as periodic training of new members to the legislative body are also included within the scope of the mandate.~~

~~For each eligible claimant meeting the above criteria, the following cost items are reimbursable:~~

~~B. Reimbursable Activities of Government Code, Sections 54952, 54954.1, 54954.3, 54954.3, 54954.4, 54957.1 and 54957.7 pursuant to Chapter 641, Statutes of 1986, Chapter 238, Statutes of 1991, Chapters 1136, 1137 and 1138, Statutes of 1993 and Chapter 32, Statutes of 1994.~~

For each eligible claimant, the following activities are eligible for reimbursement:

##### A. Open Session Activities

- ~~1. Increased costs to p~~Prepare a single agenda for a regular meeting of a legislative body of a local agency or school district containing a brief description of each item of business to be transacted or discussed at a regular meeting, including items to be discussed in closed session, and citing the time and location of the regular meeting.<sup>23</sup> (Gov. Code, § 54954.2, subd. (a).)
- ~~2. Costs to p~~Post a single agenda 72 hours before a meeting in a location freely accessible to the public. Further, every agenda must state that there is an opportunity for members of the public to comment on matters that are within the subject matter

<sup>23</sup> As amended by Statutes of 1993, chapter 1136.

jurisdiction of the legislative body, subject to exceptions stated therein. (Gov. Code, §§ 54954.2, subd. (a), and 54954.3, subd. (a).)

Beginning January 1, 1994, the following types of "legislative bodies" are eligible to claim reimbursement under these parameters and guidelines for the activities listed in section IV.A :

- Local Bodies created by state or federal statute.
- Standing Committees with less than a quorum of members of the legislative body that has a continuing subject matter jurisdiction or a meeting schedule fixed by formal action.
- Permanent & Temporary Advisory Bodies (except bodies of less than a quorum of the members of the legislative body).

#### B. Closed Session Activities

3.1. Disclose in an open meeting, prior to holding any closed session, each item to be discussed in the closed session. (Gov. Code, § 54957.7, subd. (a).)

4.2. Increased costs to include subsequent reporting requirements of action taken in closed session, including: Reconvene in open session prior to adjournment to make any disclosures required by Section 54957.1 of action taken in the closed session, including items as follows: (Gov. Code, § 54957.7, subd. (b).)

- a. Approval of an agreement concluding real estate negotiations as specified in Section 54956.8; (Gov. Code, § 54957.1, subd. (a)(1).)
- b. Approval given to its legal counsel to defend, or seek or refrain from seeking appellate review or relief, or to enter as an amicus curiae in any form of litigation, as set forth in the result of consultation under Section 43956.9; (Gov. Code, § 54957.1, subd. (a)(2).)
- c. Approval given to its legal counsel of a settlement of pending litigation as defined in Section 54956.9, at any stage prior to or during a judicial or quasi-judicial proceeding shall be reported as specified in Section 54956.9; after the settlement is final. (Gov. Code, § 54957.1, subd. (a)(3).)
- d. Disposition reached as to claims discussed in closed session shall be reported as specified on pursuant to Section 54956.95, including identification shall be reported as soon as reached in a manner that identifies of the name of the claimant, the name of the local agency claimed against, the substance of the claim, and any monetary amount approved for payment and agreed upon by the claimant; (Gov. Code, § 54957.1, subd. (a)(4).)
- e. Action taken to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee in closed session as set forth in Section 54957; and

f.e. Approval of an agreement concluding labor negotiations with represented employees pursuant to Section 54957.6 shall be reported after the agreement is final and has been accepted or ratified by the other party, as set forth in Section 54957.6.  
(Gov. Code, § 54957.1, subd. (a)(6).)

5.3. Providing copies of any contracts, settlement agreements, or other documents that were finally approved or adopted in the closed session to a person who submitted a written request within the time-lines specified or to a person who has made a standing request, as set forth in Sections 54954.1 or 54956 within the time lines specified.  
(Gov. Code, § 54957.1, subd. (b) and (c).)

6.4. Training to the new members of the only those legislative bodies that actually hold closed executive sessions, on the new closed session requirements of *Brown Act Reform*, as well as training to all new members of the legislative body on the requirements of the *Brown Act* prior to or upon attaining office. If such training is given to all members of the legislative body, whether newly appointed or existing members, contemporaneously, all time of the trainer and legislative members is reimbursable. Additionally, all time for preparation of training materials, obtaining materials including training videos and audio visual aids, and training the trainers to conduct the training is reimbursable.

Beginning January 1, 1994, the following "legislative bodies" are eligible to claim reimbursement under these parameters and guidelines for the activities listed in IV.B :

- Governing board, commission, directors or body of a local agency or any board or commission thereof, as well as any board, commission, committee, or other body on which officers of a local agency serve in their official capacity.
- Any board, commission, committee, or body which exercises authority delegated to it by the legislative body.
- Planning commissions, library boards, recreation commissions, and other *permanent* boards or commissions of a local agency composed of at least a quorum of the members of the legislative body.
- Local Bodies created by state or federal statute.
- Standing Committees with less than a quorum of members of the legislative body that has a continuing subject matter jurisdiction or a meeting schedule fixed by formal action.
- Permanent & Temporary Advisory Bodies (except bodies of less than a quorum of the members of the legislative body).

## VI. CLAIM PREPARATION AND SUBMISSION

~~Each claim for reimbursement claim for all costs incurred must be timely filed, and set forth a listing of each open meeting agenda for which reimbursement is claimed under this mandate. Each of the following cost elements must be identified for each reimbursable activity identified in section IV of this document.~~

### A. Reimbursement Options for Agenda Preparation and Posting, Including Closed Session Agenda Items

Eligible claimants may use the actual time, standard time, or flat rate reimbursement options for claiming costs incurred for agenda preparation and posting, including closed session items. Eligible claimants must claim actual costs incurred for subsequent reporting of action taken in closed session, providing copies of documents approved or adopted in closed session, and training.

For each type or name of meeting claimed during a fiscal year, select one of the following reimbursement options. For example, all city council meetings in a given fiscal year may be claimed on only one basis: actual time, standard time or flat-rate. If standard time is selected, all city council meetings must be claimed using this basis for the entire year. However, all city council meetings could be claimed on an actual cost basis during a subsequent fiscal year.

#### 1. Actual Time

~~List the meeting names and dates. Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed. Identify the employee(s), and/or show the classification of the employee(s) involved. Describe the reimbursable activities performed and specify the actual time devoted to each reimbursable activity, the productive hourly rate, and related employee benefits.~~

~~Reimbursement includes compensation paid for salaries, wages, and employee benefits. Employee benefits include regular compensation paid to an employee during periods of authorized absences (e.g., annual leave, sick leave) and the employer's contributions to social security, pension plans, insurance, and workers' compensation insurance. Employee benefits are eligible for reimbursement when distributed equitably to all job activities by the employee.~~

Counties and cities may claim indirect costs pursuant to section V.H-EC.

#### 2. Standard Time

##### a. Main Legislative Body Meetings of Counties and Cities

List the meeting names and dates. For each meeting, multiply the number of agenda items, excluding standard agenda items such as "adjournment", "call to order", "flag salute", and "public comments", by 30 minutes and then by the blended productive hourly rate of the involved employees.

Counties and cities may claim indirect costs pursuant to section V.H-EC.

- b. Special District Meetings, and County and City Meetings Other Than Main Legislative Body

List the meeting names and dates. For each meeting, multiply the number of agenda items, excluding standard agenda items such as "adjournment", "call to order", "flag salute", and "public comments", by 20 minutes and then by the blended productive hourly rate of the involved employees.

Special districts, counties and cities may claim indirect costs pursuant to section V.H-EC.

- c. School and Community College Districts and County Offices of Education

List the meeting names and dates. For each meeting, multiply the number of agenda items times the minutes per agenda item for County Offices of Education and for districts, by enrollment size, times the blended productive hourly rate of the involved employees. The minutes per agenda for County Offices of Education and for districts by enrollment size are:

County Offices of Education:	45 minutes
Districts:	
Enrollment 20,000 or more	45 minutes
Enrollment 10,000 – 19,999	15 minutes
Enrollment less than 10,000	10 minutes

School and community college districts and County Offices of Education may claim indirect costs pursuant to section V.H-EC.

### 3. Flat Rate

List the meeting names and dates. Multiply the uniform cost allowance, shown in the table provided below, by the number of meetings. ~~Using the November 30, 2000 amended Parameters and Guidelines for Open Meetings Act with a 1997-98 base year rate of \$100, for fiscal year 1993-94, the uniform cost allowance is \$90.10. The uniform cost allowance shall be adjusted each subsequent year subsequent to fiscal year 1997-1998 by the Implicit Price Deflator referenced in Government Code section 17523.~~

<u>1993-1994</u>	<u>\$ 90.10</u>
<u>1994-1995</u>	<u>92.44</u>
<u>1995-1996</u>	<u>95.12</u>
<u>1996-1997</u>	<u>97.31</u>
<u>1997-1998</u>	<u>100.00</u>

### ~~B. Reimbursement for Training, Subsequent Reporting of Action Taken in Closed Session, and Providing Copies of Documents Approved or Adopted in Closed Session~~

~~List the meeting names and dates, or the dates of training. Identify the employee(s), and/or show the classification of the employee(s) involved. Describe the reimbursable activities performed and specify the actual time devoted to each reimbursable activity, the productive hourly rate, and related employee benefits.~~

~~Reimbursement includes compensation paid for salaries, wages, and employee benefits. Employee benefits include regular compensation paid to an employee during periods of authorized absences (e.g., annual leave, sick leave) and the employer's contributions to social security, pension plans, insurance, and workers' compensation insurance. Employee benefits are eligible for reimbursement when distributed equitably to all job activities by the employee.~~

### ~~C. Services, Equipment and Supplies~~

~~Only expenditures which can be identified as a direct cost as a result of the mandate can be claimed. List cost of materials or equipment acquired which have been consumed or expended specifically for the purposes of this mandate.~~

### B. Direct Cost Reporting

Direct costs that are eligible for reimbursement are:

#### 1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

#### 2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

#### 3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

#### D4. Fixed Assets and Equipment

~~List the cost of fixed assets that have been acquired specifically for the purpose of this mandate. If a fixed asset is acquired for the *Open Meetings Act* and/or *Brown Act Reform* programs but is utilized in some way not directly related to the programs, only the pro-rata portion of the asset which is used for the purposes of the program is reimbursable.~~

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for

purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

#### 5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element B.1, Salaries and Benefits, for each applicable reimbursable activity.

#### 6. Training

Report the cost of training members of the legislative body to perform the reimbursable activities, as specified in section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element B.1, Salaries and Benefits, and B.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element B.3, Contracted Services. This data, if too voluminous to be included with the claim, may be reported in a summary. However, supporting data must be maintained as described in section VI.

#### EC. Indirect Costs Rates

Indirect costs are defined as costs which are incurred for a common or joint purpose, benefiting more than one program and are not directly assignable to a particular department of program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of central government services distributed to other departments based on a systematic and rational basis through a cost allocation plan.

#### Cities, Counties and Special Districts

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the Claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or
2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

#### School Districts

1. School districts must use the J-380 (or subsequent replacement) nonrestrictive indirect cost rate provisionally approved by the California Department of Education.

#### County Offices of Education

2. County offices of education must use the J-580 (or subsequent replacement) nonrestrictive indirect cost rate provisionally approved by the State-California Department of Education.

#### Community Colleges

3. Community colleges have the option of using (1) a federally approved rate, using the cost accounting principles from the Office of Management and Budget OMB Circular A-21 "Cost Principles of Educational Institutions", (2) the rate calculated on State Controller's Form FAM-29C; or (3) a 7% indirect cost rate.

### **VII. SUPPORTING DATA**

#### A. Source Documents

For auditing purposes, all incurred costs claimed must be traceable to source documents and/or worksheets that show evidence of and their validity of such costs and relationship to the reimbursable activities. Documents may include, but are not limited to, worksheets, employee time records or time logs, cost allocation reports (system generated), invoices, receipts, purchase orders, contracts, agendas, training packets with signatures and logs of attendees, calendars, declarations, and data relevant to the reimbursable activities otherwise reported in compliance with local, state, and federal government requirements.

For those entities that elect reimbursement pursuant to ~~Option 2~~, the standard time methodology, option 2 in section V.H-A-2, documents showing the calculation of the blended productive hourly rate and copies of agendas shall be sufficient evidence. For those entities

that elect reimbursement pursuant to ~~Option 3~~, the flat-rate methodology, option 3 in section V, II-A-3, copies of agendas shall be sufficient evidence. Pursuant to ~~Government Code, Section 17558.5~~, the supporting documents must be kept on file by the agency submitting the claim for a period of up to two years after the end of the calendar year in which the reimbursement claim is filed, and made available at the request of the State Controller or his agent.

The blended productive hourly rate, used in claiming standard or unit time reimbursements, may be calculated by determining the percentage of time spent by persons or classifications of persons on the reimbursable activities and multiplying the productive hourly rate (including salaries, benefits and indirect costs, if not claimed elsewhere) for each person or classification of persons times the percentage of time spent by that person or classification of persons. Claimants may determine a percentage allocation for the person or classification of persons in a base fiscal year and use that percentage allocation for subsequent future years by multiplying the base year percentages times the productive hourly rate for that person or classification of persons for the fiscal year of the reimbursement claim.

For example, a city manager may determine that the percentage of time spent on the reimbursable activities by various classifications in a base year of fiscal year 1998-~~1999~~ was as follows:

City Manager	17%
City Attorney	15%
City Clerk	36%
Department Managers	9%
Secretaries	23%
Total	100%

The city determines that the productive hourly rate (salaries, benefits, and indirect costs) for fiscal year 2000-2001 for each classification are as follows:

	Salary	Benefits	Indirect Cost Rate	Indirect Costs	Productive Hourly Rate
City Manager	\$60	\$12	29%	\$13	\$85
City Attorney	\$55	\$10	30%	\$15	\$80
City Clerk	\$40	\$ 8	31%	\$12	\$60
Department Manager	\$45	\$ 9	30%	\$11	\$65
Secretaries	\$18	\$ 5	25%	\$ 7	\$30

The blended productive hourly rate for fiscal year 2000-2001 is determined by multiplying the percentages in the base year times the productive hourly rate in the fiscal year claimed, and adding the totals, as follows:

City Manager	17%	\$85	\$14.25
City Attorney	15%	\$80	\$12.00
City Clerk	36%	\$60	\$21.60
Department Manager	9%	\$65	\$ 5.85
Secretaries	23%	\$30	\$ 6.90
Total	100%		\$60.80

The city's claim would be determined by multiplying the blended productive hourly rate times the minutes per agenda item times the number of agenda items.

#### B. Record Keeping

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to audit by the State Controller no later than two years after the end of the calendar year in which the reimbursement claim is filed or last amended. See the State Controller's claiming instructions regarding retention of required documentation during the audit period.

#### **VIII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENTS**

Any offsetting savings that the claimant experiences, in the same program as a direct result of ~~this mandate the same statutes or executive orders found to contain a mandate must shall~~ be deducted from the costs claimed. In addition, reimbursement for this mandate from any other source, including but not limited to, service fees collected, federal funds and other state funds, shall be identified and deducted from this claim.

#### **VIIIX. STATE CONTROLLER'S OFFICE REQUIRED CERTIFICATION**

An authorized representative of the claimant shall be required to provide a certification of the claim, as specified in the State Controller's claiming instructions, for those costs mandated by the State contained herein.

#### **IX. PARAMETERS AND GUIDELINES AMENDMENTS**

~~Any eligible claimant or state agency may petition the Commission to amend the standard time and flat rate provisions stated herein. Pursuant to Title 2, California Code of Regulations, section 1183.2, parameters and guidelines amendments filed before the deadline for initial claims as specified in the claiming instructions shall apply to all years eligible for reimbursement as defined in the original parameters and guidelines. A parameters and guidelines amendment filed after the initial claiming deadline must be submitted on or before January 15, following a fiscal year in order to establish eligibility for reimbursement for that fiscal year.~~

Parameters and guidelines may be amended pursuant to Title 2, California Code of Regulations section 1183.2.

1 (A chorus of "ayes" was heard.)

2 ACTING CHAIR SHERWOOD: Opposed?

3 The consent item is approved.

4 MS. HIGASHI: I'd just like to note, for  
5 purposes of the record, that the Department of Finance  
6 had given me one suggested change for the remainder of  
7 that test claim, which won't be on the agenda until the  
8 May hearing. So for purposes of the May hearing, we'll  
9 be making that correction; but it's not part of this  
10 agenda item.

11 ACTING CHAIR SHERWOOD: It's not pertaining to  
12 this issue today on consent?

13 MS. HIGASHI: Correct. But it is set for the  
14 May hearing; and we'll make that correction.

15 ACTING CHAIR SHERWOOD: That is very good, since  
16 we've already voted.

17 MEMBER STEINMEIER: We're too fast.

18 MS. HIGASHI: But it was for the May item.

19 ACTING CHAIR SHERWOOD: Did we move too quickly  
20 for you?

21 MS. HIGASHI: No, it was for the May item that  
22 he had given me the correction.

23 This brings us to Item 3, the Proposed  
24 Parameters and Guidelines on Open Meetings Act, Brown Act  
25 Reform. This item will be presented by Shirley Opie,

1 Assistant Executive Director.

2 MS. OPIE: Thank you.

3 Good morning.

4 ACTING CHAIR SHERWOOD: Good morning.

5 MS. OPIE: This item is the Proposed Parameters  
6 and Guidelines for the Brown Act Reform test claim.

7 Eligible claimants that incurred increased costs  
8 for preparing and posting an agenda, including  
9 closed-session items for the new types of legislative  
10 bodies added by Brown Act Reform, can claim reimbursement  
11 beginning January 1st, 1994, which is the effective date  
12 of the test claim statutes.

13 Eligible claimants that incurred increased costs  
14 to apply to the closed-session requirements of Brown Act  
15 Reform, specifically, to disclose in an open meeting  
16 prior to holding any closed session, each item to be  
17 discussed in the closed session; to reconvene in open  
18 session prior to adjournment and report the actions and  
19 votes taken in closed session; and to provide copies of  
20 closed-session documents and claim reimbursement  
21 beginning January 1, 1994.

22 Eligible claimants will have three options for  
23 claiming reimbursement for the costs of preparing and  
24 posting an agenda, including the closed session items.  
25 Those are actual time; standard time, which is a set

1 amount per agenda item, that's based on the type of  
2 claimant; or three, a flat rate per meeting.

3 The basis for the standard times and the flat  
4 rate were established in amendments to the Open Meetings  
5 Act Parameters and Guidelines that were adopted by the  
6 Commission last November, in November 2000.

7 Only one reimbursement option can be selected  
8 for each type of meeting during a fiscal year, for  
9 claiming costs incurred for agenda prep and posting.

10 Eligible claimants must claim actual costs  
11 incurred for subsequent reporting of actions taken in  
12 closed session, providing the copies of the documents  
13 that were approved or adopted, and training, regardless  
14 of the reimbursement option that they choose to claim  
15 costs for agenda preparation and posting.

16 Beginning with the annual reimbursement claims  
17 filed for 2001-2002 fiscal year costs, all claimants will  
18 claim costs for all reimbursable activities for Open  
19 Meetings Act and Brown Act Reform under these Parameters  
20 and Guidelines. Until that time, however, reimbursement  
21 for Open Meetings Act must be claimed under that program  
22 as prescribed in the State Controller's claiming  
23 instructions.

24 Based on the evidence in the record, staff  
25 included ongoing training as a reimbursable activity

1 because it constitutes a reasonable method of complying  
2 with the mandated activities. However, it is limited to  
3 training the members of only those legislative bodies  
4 that hold those closed sessions; and further, to the  
5 activities related to closed-session requirements.

6 Staff is proposing some clarifying changes that  
7 are listed on the errata sheet. It's the pink sheet that  
8 you have for this item.

9 These changes do three things:

10 One, they clarify that the legislative bodies  
11 that were previously subject to the requirements to  
12 prepare and post an agenda can claim reimbursement for  
13 preparing closed-session items. However, they can only  
14 use the actual costs or the standard time reimbursement  
15 methodology.

16 Secondly, the proposed changes clarify that the  
17 flat rate includes all costs for preparing and posting an  
18 agenda, including closed-session agenda items. Claimants  
19 that filed reimbursement claims under Open Meetings Act  
20 using the flat rate cannot file another reimbursement  
21 claim using the flat rate for agenda preparation of the  
22 closed-session items.

23 And third, cross-references to the provisions  
24 related to training are added to clarify that if the  
25 training that is provided is broader than Brown Act

1 Reform closed-session requirements, only the pro rata  
2 portion of the training is reimbursable. A technical  
3 change is also proposed to correct a code section  
4 reference.

5 Staff recommends that the Commission adopt the  
6 claimant's proposed parameters and guidelines, as  
7 modified by staff, which began on page 13.

8 Staff also recommends that the Commission  
9 authorize staff to make any nonsubstantive, technical  
10 credentials to the Parameters and Guidelines, following  
11 the hearing.

12 Will the parties please stated your names for  
13 the record?

14 MS. STONE: Good morning, ladies and gentlemen  
15 of the Commission. Pam Stone on behalf of the City of  
16 Newport Beach.

17 MR. EVERROAD: Glen Everroad, City of Newport  
18 Beach.

19 MR. PAULIN: Matt Paulin, Department of Finance.

20 MS. BRUMMELS: Ginny Brummels, State  
21 Controller's Office.

22 MR. SILVA: Shawn Silva, State Controller's  
23 office.

24 MS. GEANACOU: Good morning. Susan Geanacou,  
25 Department of Finance.

1           ACTING CHAIR SHERWOOD: Thank you.

2           I think we'll follow our normal process and  
3 we'll ask the claimants to address the Board, and then  
4 we'll move to the Department of Finance and State  
5 Controller's Office.

6           MS. STONE: Thank you very much, Mr. Chairman.

7           First of all, we'd like to thank the staff for  
8 their incredible amount of effort and time that has gone  
9 into this. It has not been easy, going through some of  
10 the permutations; and we do concur that the only way one  
11 can obtain reimbursement for closed-session items is  
12 using actual time or standard times; and that if one uses  
13 the flat rate, it is assumed to encompass all  
14 closed-session items as well as reporting out. And that  
15 is extremely clear.

16           The only difference of opinion that we have with  
17 staff is concerning the training component. We believe  
18 that the training component has been unfairly limited to  
19 just training on closed-session items. And this is the  
20 reason: As you will see from your Parameters and  
21 Guidelines -- and we're working off of so many different  
22 copies of this, I can't tell you which portion -- but  
23 what it discusses is that, commencing January 1, 1994,  
24 the amendments to the Brown Act brought into the  
25 requirements of the Open Meetings Act a substantial

1 number of advisory boards and commissions that previously  
2 were not subject to it, to the Brown Act, or it was  
3 unclear as to whether or not they actually fell within  
4 the parameters of the Brown Act.

5 I hate to go back to ancient history, but back  
6 when the Brown Act Reform was passed, I was working for  
7 Fresno County, in the County Counsel's office, and  
8 honestly, I can't remember if I was a senior or chief  
9 deputy, because I received a promotion during that period  
10 of time. But it was my responsibility to go out and  
11 provide training to those advisory boards that previously  
12 had not been subject to the Brown Act. I remember that  
13 two of the boards that I had to do, amongst others, were  
14 the Mental Health Advisory Board, as well as the Drug and  
15 Alcohol Advisory Board that had been created by state  
16 statute.

17 I remember trying to impress upon one gentleman,  
18 who was employed in education and was working on a law  
19 degree, that the only way you could discuss something is  
20 if it was on the agenda; and if you wanted to discuss  
21 something, you had to, in fact, direct staff to place it  
22 on the agenda or you could not discuss it.

23 Furthermore, that, obviously, since 1986 there's  
24 been an opportunity for public comment; and a lot of  
25 times, the public will come up and make a point. But,

1 obviously, your board or commission cannot make any  
2 discussion of that fact unless it has been agendized.  
3 And the most that staff could do -- or the Board could  
4 do would be to prefer it to staff, to have it set on a  
5 future agenda.

6 So although what we're requesting is to expand  
7 it to those advisory boards and commissions for training  
8 that were not previously required to do so.

9 I know there is some concern regarding costs.  
10 Generally speaking, a lot of the members of these  
11 advisory boards and commissions are volunteer positions.  
12 And, therefore, there would be no costs for the  
13 volunteers because they're not in paid positions. What  
14 it would be is basically the time of the trainer, who  
15 had to go prepare materials for this particular board or  
16 commission, and tell these volunteers that, "Yes, you  
17 can do this. The Brown Act says you can," or, "No, you  
18 can't do this. The Brown Act says you can't."

19 And, you know, it was a substantial endeavor  
20 during 1994 to explain to individuals that it's not a  
21 method of not being able to accomplish what you want, but  
22 being able to set it in such a manner that you can, in  
23 fact, have a discussion and action items, as long as it's  
24 properly agendized.

25 So in that respect, we're requesting that the

1 claimant's original terminology with respect to training,  
2 which would include advisory boards and commissions which  
3 were not previously subject to the Brown Act, encompassed  
4 within the purview of training.

5 Thank you very much.

6 ACTING CHAIR SHERWOOD: Thank you.

7 Mr. Everroad, did you wish to make a comment?

8 MR. EVERROAD: I, too, would like to thank staff  
9 for their efforts in working through this complex claim,  
10 and just echo the opinion of Pam Stone that training is a  
11 significant component in compliance with this Brown Act  
12 and Open Meetings Act requirement; and we'd urge the  
13 members to consider our situation. We have these costs,  
14 and we think that, appropriately, they should be  
15 reimbursed.

16 Thank you.

17 ACTING CHAIR SHERWOOD: Thank you.

18 Matt?

19 MR. PAULIN: Matt Paulin, Department of Finance.

20 We are opposed to inclusion of the training  
21 based on the fact that it wasn't included in the staff's  
22 Statement of Decision or the Commission's Statement of  
23 Decision. So that was our grounds for opposition to  
24 inclusion of the training.

25 ACTING CHAIR SHERWOOD: Thank you.

1                   Shawn?

2                   MR. SILVA: The Controller's office is in  
3                   agreement with the staff analysis. And our position on  
4                   the training would essentially be the same as Finance,  
5                   that it would be going beyond what was provided in the  
6                   Statement of Decision.

7                   ACTING CHAIR SHERWOOD: Thank you.

8                   Would staff wish to make any comments to Pam?

9                   MS. SHELTON: Just a couple of comments on the  
10                  training, and I think Shirley wants to make a clarifying  
11                  comment.

12                 With regard to the member training requested by  
13                 the claimants, they have requested training the entire  
14                 membership of the body on the entire Brown Act. The  
15                 entire Brown Act has never been the subject of the test  
16                 claim. The test claim is just limited to five code  
17                 sections, and there's only a Statement of Decision on  
18                 five code sections. So providing training on the entire  
19                 Brown Act would be going beyond the scope of this  
20                 Commission's Statement of Decision.

21                 Also, a lot of those provisions were enacted  
22                 originally in 1953, so they may not even qualify for a  
23                 reimbursement under Article XIII, Section 6, in the first  
24                 place.

25                 Finally, the last reason we did not recommend

1 training on the activities of preparing and posting the  
2 agenda is because those activities are performed by staff  
3 members, generally, and not by members of the Board.

4 ACTING CHAIR SHERWOOD: Thank you.

5 Board Members, any questions?

6 MS. SHELTON: One more. There was one more,  
7 too. The Commission is not precluded from having a  
8 ruling on a training issue at the P's and G's phase even  
9 though it is not in the Statement of Decision.  
10 Training, the Commission does have authority to include  
11 activities in the Parameters and Guidelines that are  
12 reasonably related to a mandated activity, so you can go  
13 beyond those activities listed in the Statement of  
14 Decision.

15 ACTING CHAIR SHERWOOD: Thank you. I think the  
16 issue we've heard this morning have been addressed in the  
17 material brought before us, so I believe all the members  
18 have the pros and cons on these issues.

19 MEMBER LAZAR: I would just like to ask the  
20 claimants the response to --

21 ACTING CHAIR SHERWOOD: Yes.

22 MS. STONE: I'm sorry, I didn't --

23 MEMBER LAZAR: I just wanted to ask for a  
24 response to legal counsel's response to your statement.

25 MS. STONE: I would agree that our original

1 request was for all of the training on the Brown Act.  
2 At this point in time what we're asking for is training  
3 to those boards and commissions this were brought under  
4 the Brown Act in 1994. And that is because these  
5 individuals previously were not subject to it, and they  
6 now have to post an agenda and they have to prepare the  
7 agenda.

8 And, yes, we are aware that staff generally  
9 prepares an agenda; but I have also unfortunately  
10 participated in more agenda preparation meetings than I  
11 care to relate in my history; and it is not uncommon for  
12 board members to raise issues that they wish to have  
13 addressed; because unless staff places it on the agenda,  
14 your board or commission is precluded from discussing the  
15 item. And so the board and commission members need to be  
16 aware that if they have an issue that needs to be  
17 discussed, it needs to not only be on the agenda, but the  
18 terminology needs to be appropriate, such that the action  
19 desired by the board or commission can actually be taken.

20 ACTING CHAIR SHERWOOD: John, any further  
21 questions?

22 MEMBER LAZAR: No, thank you.

23 Go ahead, it's your turn, John.

24 MEMBER HARRIGAN: I was going to say --

25 ACTING CHAIR SHERWOOD: Mr. Harrigan?

1 MEMBER HARRIGAN: Camille, do you have any  
2 response to that? I mean, they're narrowing it. If I  
3 heard what you were saying, you were concerned about  
4 going back to the beginning of the Brown Act, back in the  
5 1950's.

6 MS. SHELTON: Well, I'm not sure that they have  
7 narrowed it because they're still requesting  
8 reimbursement for training the new members on the Brown  
9 Act, and there has not been a Commission decision on the  
10 Brown Act.

11 One thing, if you did decide to give training on  
12 those two activities, which are really just limited to  
13 preparing and posting an agenda, the old P's and G's for  
14 the Open Meetings Act does not include a reimbursable  
15 component for training. So the old legislative bodies  
16 are not getting reimbursed for training but the new ones  
17 would be, which could be seen as inconsistent.

18 MEMBER HARRIGAN: Thank you.

19 ACTING CHAIR SHERWOOD: Thank you.

20 MEMBER SMITH: I have a question to the staff.  
21 On your comment that the Board is not prohibited on  
22 considering an issue like training that's not addressed  
23 in the Statement of Decision, has that occurred on a  
24 regular basis in the past --

25 MS. SHELTON: Yes.

1 MEMBER SMITH: So historically, this has not  
2 happened? This is not precedent-setting?

3 MS. SHELTON: That's correct, and training has  
4 been approved by the Commission at the Parameters and  
5 Guidelines phase.

6 MEMBER SMITH: And one follow-up, a very quick  
7 question on the last discussion: The issue -- as a  
8 novice to this, am I reading it correctly that the issue  
9 of going back, potentially addressing issues that were  
10 not initially a part of this, opens up the entire Brown  
11 Act, which is more appropriately a part of a different  
12 submission or claim?

13 MS. SHELTON: No. I think that would be too  
14 broad. It's limited in scope at this phase. I mean, at  
15 the test claim phase, there has to be ruling on the  
16 activities that are expressly required by the test claim  
17 statutes. Those are the activities that the Legislature  
18 has adopted and enacted.

19 All the Commission can do at the Parameters and  
20 Guidelines phase is to include activities that are  
21 reasonably related to those expressly required activities  
22 in the statute.

23 So if, for example, somebody was requesting  
24 reimbursement on a part of the Brown Act which has never  
25 come before the Commission, which is included in the

1 statute, that would go beyond the Commission's Statement  
2 of Decision, in that case.

3 MEMBER LAZAR: So, in your opinion, there's no  
4 way to fix it, to accommodate what the claimant is  
5 requesting?

6 MS. SHELTON: It would have to be limited.  
7 I mean, to request reimbursement on the entire -- for  
8 training on the entire Brown Act would go beyond the  
9 scope. I don't know how -- I guess the only way, if you  
10 wanted to give them training, would be to only limit  
11 training to those reimbursable activities in the  
12 Statement of Decision and that's simply preparing or  
13 posting the agenda, which, as I mentioned earlier, staff  
14 routinely does those activities.

15 MEMBER LAZAR: What's the claimant's feeling  
16 about that?

17 MS. STONE: The claimant believes that for those  
18 bodies that came under in January 1 of 1994, it was very  
19 incumbent that they be trained on the issue of the agenda  
20 itself. And there's a real reason for that.

21 I believe that all of you -- and I apologize,  
22 Mr. Smith, because we went through this at the original  
23 test claim hearing -- the problems, if you violate the  
24 Brown Act, is that any action that was taken by the board  
25 or commission is voidable, which can result in a

1 substantial amount of liability to the board or  
2 commission, sometimes to the members individually, as  
3 well as to the public entity.

4 So when you were talking about training on the  
5 agenda, not only are you talking about training on the  
6 fact that you can only discuss that which is agendized,  
7 but also that you can only take that action which is on  
8 the agenda, and also the penalties for failure to comply.

9 This really is the heart of the Brown Act, when  
10 you come right down to -- the heart of the Brown Act  
11 being the appropriate agendizing, the fact that you have  
12 to allow public members to speak, and the proper  
13 methodology for addressing items in closed session; and  
14 that if there is no authority for handling something in  
15 closed session, you cannot go there.

16 And so this is what we believe, that if there is  
17 training to the new boards and commissions on  
18 reimbursable activities and the consequences for  
19 violation, we'd be extremely satisfied. And it could be  
20 prorated.

21 MEMBER STEINMEIER: Can I say something?

22 ACTING CHAIR SHERWOOD: Joann?

23 MEMBER STEINMEIER: I would support that.

24 It is a little unfortunate that we didn't look at  
25 training the staff with those boards because those people

1 on a regular basis advise them. Perhaps through the  
2 training process of the board members, though, the staff  
3 either would be present and a part of that so that  
4 they're all hearing the same thing, at the same time.  
5 There are horror stories out there of school boards and  
6 city councils who have gone afoul of this law; and  
7 historically, no one ever went after them. But district  
8 attorneys are now starting to take this seriously. And  
9 certainly in L.A. County, there have been people actually  
10 sentenced to Brown Act school, and publicly ridiculed for  
11 violating the Brown Act.

12 So I think it is a serious matter. And I would  
13 support the idea of adding that narrow addition of  
14 training members on the proper agendaing of an item and  
15 how those actions have to be displayed on an agenda in  
16 order to be able to take that action at that particular  
17 meeting. I do support that idea.

18 MEMBER LAZAR: Would you make that a motion?

19 MEMBER STEINMEIER: Yes, I'll move that.

20 MEMBER LAZAR: I'll second it.

21 MS. SHELTON: Can I --

22 ACTING CHAIR SHERWOOD: Sure.

23 MEMBER STEINMEIER: A clarification. I knew  
24 that was coming, Camille.

25 ACTING CHAIR SHERWOOD: And also if we could

1 take any further comment from the Board before we vote on  
2 that.

3 MS. SHELTON: Are you talking about then  
4 training just for the new legislative bodies --

5 MEMBER STEINMEIER: Yes.

6 MS. SHELTON: -- that's become subject to the  
7 Brown Act which are identified on page 27, the first  
8 three bullets?

9 MEMBER STEINMEIER: Let me double-check that.

10 I believe that's what Ms. Stone is asking.

11 MS. STONE: Yes, it is.

12 MEMBER STEINMEIER: Yes.

13 MS. SHELTON: And also, is your motion for  
14 one-time or ongoing training?

15 MEMBER STEINMEIER: Well, obviously, there is an  
16 initial training. And then for new members to these  
17 bodies, there would be additional training. And I think  
18 somewhere we talked about that, new members, on some  
19 other items -- new members that need to be trained.

20 MS. SHELTON: Because the recommendation at this  
21 point, as far as closed-session training, the staff has  
22 recommended ongoing training for that.

23 MEMBER STEINMEIER: To be consistent, ongoing  
24 makes sense; is that what you're saying, Camille?

25 MS. SHELTON: It would be up to the Commission.

1 MEMBER STEINMEIER: Well, let's say "ongoing"  
2 then, to be consistent with the other. If you have a lot  
3 of different ones, it gets very confusing for the  
4 Controller's office, as well as the claimants.

5 MS. GEANACOU: Excuse me, if the Chair will so  
6 permit me, may I still make a comment on behalf of  
7 Finance, please?

8 ACTING CHAIR SHERWOOD: Definitely. I thought  
9 what we might do first is go to the Board members --

10 MS. GEANACOU: Very well.

11 ACTING CHAIR SHERWOOD: -- and then we'll very  
12 definitely come back to you.

13 MS. GEANACOU: Thank you.

14 MEMBER STEINMEIER: So that's what it is,  
15 "ongoing."

16 ACTING CHAIR SHERWOOD: Board Members? John?

17 MEMBER HARRIGAN: Thank you.

18 If we accepted this motion, is it something that  
19 the administrative bodies can interpret and follow? I'm  
20 addressing the Controller's office.

21 MS. BRUMMELS: I would like to think that those  
22 legislative bodies would need to be more clearly defined  
23 within the Parameters and Guidelines, so that there would  
24 be ease, and it would be clearly identified as to which  
25 bodies would be eligibility and for which time period

1 that training would be allowable.

2 MEMBER HARRIGAN: Okay.

3 ACTING CHAIR SHERWOOD: Any further comment from  
4 the Board?

5 The Department of Finance?

6 MS. GEANACOU: Yes, thank you. Susan Geanacou,  
7 Department of Finance.

8 If the Commission is inclined to include  
9 training in the parameters and guidelines, Finance would  
10 request that the training be limited to a one-time basis,  
11 as noted by staff, as opposed to training provided on an  
12 ongoing or refresher basis. Simply that persons coming  
13 under this requirement be provided -- be limited to  
14 one-time training, and that it be one time and not  
15 ongoing or refresher training.

16 ACTING CHAIR SHERWOOD: Thank you.

17 MEMBER HARRIGAN: Can I ask for clarification?

18 ACTING CHAIR SHERWOOD: Yes.

19 MEMBER HARRIGAN: When you said "one time,"  
20 you're not talking about one time at this point; but as  
21 new members would come on to the Commission, that there  
22 would be training at that point?

23 MS. GEANACOU: That's correct. Each person who  
24 would be expected to be aware of this would receive  
25 training on a time-appropriate basis, depending on when

1 they came on board, so to speak, yes.

2 MEMBER HARRIGAN: Thank you.

3 MEMBER STEINMEIER: I have a comment,

4 Mr. Chair, to follow up on John's direction.

5 ACTING CHAIR SHERWOOD: Yes, Joann?

6 MEMBER STEINMEIER: As a practical matter, when  
7 new members come on to any kind of a body, it would cost  
8 the same amount to train all of them on an ongoing basis  
9 as it would be to add one or two more people each time.  
10 There really would be no cost difference, just doing one  
11 training session. And so -- I don't know how to phrase  
12 this -- but the reality is that it wouldn't be any more  
13 expensive to do it on an ongoing basis than it would be  
14 as new members come on board. Because there is usually a  
15 pretty good turn-over. So it would just happen every  
16 time there are new members, you get the training again;  
17 and everybody gets the training again, but not every year  
18 for every person.

19 So as a practical matter, there really is no  
20 cost difference and probably would be more effective.

21 ACTING CHAIR SHERWOOD: Pam?

22 MS. STONE: Thank you very much, Mr. Sherwood.

23 Mr. Harrigan, a lot of boards and commissions  
24 have volunteers, in which event, the only cost you have  
25 is for the trainer; because, in large part, these

1 particular training sessions are agendized and heard in  
2 open session because it's one place where, obviously, in  
3 accordance with the Brown Act, you can, in fact, have  
4 everybody present; it's agendized; you provide the  
5 training; it's open to the public the knowledge.

6 So when you have board and commission members  
7 that are volunteers, it costs absolutely nothing because  
8 all we're really going to be getting is the cost of the  
9 trainer. That's the only time you're going to have  
10 situations is when you have board and commission members  
11 who are on staff because of their position, in which case  
12 you would have their salaries.

13 With regard to Ms. Brummels' request that you  
14 have some way of determining where all these boards and  
15 commissions are, unfortunately, every jurisdiction has  
16 different boards and commissions. Obviously, there's  
17 some that you're required to have by statute. But the  
18 only thing I have seen in the course of going through the  
19 Open Meetings Act and all the incorrect claims in Open  
20 Meetings Act, is that there were no two jurisdictions  
21 that were similar.

22 And I understand, Ms. Brummels, either the city  
23 clerk, county counsel, the executive department of the  
24 school will have a listing of the boards and commissions,  
25 but not always. And that's my only comment in response

1 to that.

2 ACTING CHAIR SHERWOOD: Thank you, Pam.

3 MS. STONE: Thank you, sir.

4 ACTING CHAIR SHERWOOD: I would like to ask  
5 staff to comment on this. I think Ms. Brummels' comments  
6 are to the point because we want to be as exact as  
7 possible. In other words, we need to be more exact as we  
8 move into the future.

9 My tendency is to vote for the staff's  
10 recommendation, as it stands at the moment. If I were  
11 going to move towards voting for an amended case, I would  
12 want to be sure that what we're doing, number one, is  
13 legal; number two, that it's framed very, very tightly.  
14 So I think the amendment, Joann, would have to be really  
15 very specific in nature.

16 But once again, I would like to hear from staff  
17 as to whether this motion, frankly, would be within our  
18 purview.

19 MS. SHELTON: Well, the motion is within your  
20 purview because you would be finding that training  
21 members on posting and preparing an agenda would be  
22 reasonably related to those two activities. You can make  
23 that motion. I mean, it's something within your  
24 authority to do.

25 ACTING CHAIR SHERWOOD: And within the Statement

1 of Decision?

2 MS. SHELTON: Yes, if it's limited to those two  
3 activities, it would be limited to preparing or posting  
4 the agenda.

5 ACTING CHAIR SHERWOOD: Okay.

6 MS. SHELTON: As far as identifying bodies, they  
7 already are identified in the P's and G's as those three  
8 that Joann mentioned, you know, the local bodies created  
9 by state and federal statute, et cetera. So those would  
10 be identified. And then it would have a reimbursement  
11 period beginning January 1, 1994.

12 One thing, if that happens, though, just realize  
13 that the legislative bodies that were subject to the  
14 Brown Act before, under the Open Meetings Act, would not  
15 be receiving training.

16 ACTING CHAIR SHERWOOD: That, I believe, has  
17 been made clear.

18 Staff, any further comments?

19 MS. SHELTON: No.

20 ACTING CHAIR SHERWOOD: Mr. Burdick, I notice  
21 you've wandered up to the table, which is not unusual.

22 MR. BURDICK: Thank you very much, Chairman  
23 Sherwood and Members of the Board.

24 I thought maybe I could put this into a little  
25 better context for the state members, because I don't

1 think you quite really understand the magnitude of this  
2 particular bill. This was in one of the most significant  
3 pieces of legislation before local agencies in the '93-94  
4 year, because it made a wide range of changes to the  
5 Ralph M. Brown Act that was amended in 1986, your  
6 original mandate. And as a result of that, the League of  
7 Cities and other associations actually prepared published  
8 booklets to people to explain the differences.

9 So if you look at it kind of like the  
10 Bagley-Keene Act that you're under, and there was a major  
11 rewrite and change to that, the question would be: Would  
12 you just talk about the changes, or do you show within  
13 the Bagley-Brown Act (sic) what stayed and what didn't?

14 And that's exactly what happened in local  
15 government, is that when you do this, you have to kind of  
16 go through the process and say, you know, "This didn't  
17 change. This did change." But this was a very  
18 comprehensive and expansive change to the Brown Act.  
19 It was not an effort just to make a few minor changes.  
20 This was the work of the Attorney General, of a number of  
21 state agencies, obviously the taxpayers' association, the  
22 newspaper publishers and all the local agencies. And  
23 this was a very long and tedious process to try to  
24 clarify the 1986 amendment, which is the current mandate.

25 So this was not just a small, little bill out

1 there that made a few changes. This made a number of  
2 changes and clarifications. And in order to do the  
3 training on this -- and I participated in some sessions  
4 as a presenter on some of these sessions -- I can tell  
5 you, you can't just say, you know, kind of, "This is what  
6 it is." You have to kind of explain what was there  
7 before, what is there now, what has changed, what hasn't  
8 been changed.

9 So this is not -- the training on this, I don't  
10 think you can differentiate it from saying "You can only  
11 talk about the changes"; I think you have to explain  
12 whole law process, what changed and how it relates, one  
13 to the other. I just don't think there is any reasonable  
14 or practical way that anybody actually did training where  
15 they didn't discuss other parts of the statute.

16 It could also be made analogous to the change  
17 when this went from the Commission on State Mandates,  
18 under the old Board of Control, to the Commission on  
19 State Mandates. A lot of that language remained the same  
20 and some of it was changed.

21 But I think the members and the people that went  
22 through there had to go through the whole process to look  
23 at what was new, what was old, what was in place. You  
24 couldn't just talk about, you know, what may have changed  
25 in that because there was a lot of changes. But I would

1 grant that if you went back and looked at those two  
2 items, that probably at least half of the language is  
3 probably verbatim from pre-'85, and half of it has  
4 changed. And so I think when you do that kind of  
5 training, you do have to cover the whole subject.

6 And I don't think there's any way to just say  
7 that we're just going to train on those specific pieces  
8 that were changed. I think you have to address the whole  
9 act because of the comprehensive nature of this  
10 particular statute.

11 ACTING CHAIR SHERWOOD: Thank you.

12 Camille?

13 MS. SHELTON: Just a comment. A reminder that  
14 the whole act has never been brought before the  
15 Commission. There isn't a Commission decision on the  
16 whole Brown Act.

17 ACTING CHAIR SHERWOOD: Thank you.

18 Joann, you had a motion and a second.

19 MEMBER STEINMEIER: Ms. Stone has more thing.  
20 I see fingers.

21 MS. STONE: Mr. Sherwood, I have a compromise  
22 that I would like to tender and offer, to see if this  
23 makes sense. And, I don't know, those of you who were  
24 present at the original test claim hearing, part of your  
25 materials, I did show you the training materials

1 I believe used not only by the League of Cities but by  
2 Fresno County that showed side-by-side comparisons of the  
3 old law and new law.

4 It could probably be, as a compromise, I would  
5 like to offer 50 percent of the training that is done to  
6 new boards and commissions, and I think that would take  
7 care of an issue of having to determine what the pro rata  
8 portion is. So instead of doing pro rata portion, just  
9 do a flat 50 percent of training of the new boards and  
10 commissions, that come in since 1994. I think that would  
11 take care of the issue and would make it easier for the  
12 State Controller's office -- I mean, this is just an  
13 offer in compromise.

14 MEMBER LAZAR: It's like the Legislature, huh?

15 ACTING CHAIR SHERWOOD: Would staff like to add  
16 a comment to that?

17 MS. SHELTON: You have the authority to accept  
18 it. You might want to hear from the parties at the  
19 table. But you would be finding that the 50 percent  
20 would be reasonably related to the Commission's Statement  
21 of Decision on reimbursable activities.

22 ACTING CHAIR SHERWOOD: I don't think we have  
23 enough information to know that 50 percent makes any  
24 sense. And, quite frankly, we still get back to the  
25 issue of one-time posting and the agenda, which,

1 Mr. Burdick, I think would like to see it go to a much  
2 wider interpretation than that, which I don't see.

3 Joann -- do we have anyone else that wishes to  
4 speak to the issue?

5 Shawn?

6 MR. SILVA: A question. Our concern here is,  
7 I think, more procedural; and that is, we're starting to  
8 talk about lots of different language and options and  
9 proposals; and we have nothing on paper. This is all  
10 verbal and off the cuff. And I believe the concern would  
11 be that we're not really sure where we're going, and that  
12 something in writing -- potentially putting this off for  
13 another hearing with something in writing from claimants  
14 of exactly what, in writing, their proposal is so that  
15 the state agencies can review it and make an intelligent  
16 comment, and that that can come before the Commission and  
17 we would have something in writing for which you could  
18 all have prepared for and know what we're voting on.

19 ACTING CHAIR SHERWOOD: Thank you, Shawn.

20 MEMBER SMITH: The representative addressed the  
21 issue I was going to ask them about.

22 ACTING CHAIR SHERWOOD: I think that's very  
23 true; and I'll continue this item for that information.  
24 Right now, of course, we have a motion and a second  
25 before us. And I don't know what Ms. Steinmeier wishes

1 to do on that. Or, of course, we could always take a  
2 motion on the staff's report as it stands on the  
3 P's and G's.

4 MEMBER STEINMEIER: I'd like to withdraw my  
5 motion and continue this, so we have time to really  
6 consider some specific language; and I hope Ms. Stone  
7 will to participate in that.

8 MEMBER LAZAR: I'll withdraw my second.

9 ACTING CHAIR SHERWOOD: Fine.

10 Ms. Higashi, do you have a comment?

11 MS. HIGASHI: May I suggest procedurally that  
12 someone make a motion to either amend Ms. Steinmeier's  
13 original motion and --

14 MEMBER HARRIGAN: I'll make a motion to amend  
15 Ms. Steinmeier's motion by asking for a deferral of this  
16 item until --

17 MS. HIGASHI: Until the next agenda.

18 MEMBER HARRIGAN: -- the next subsequent  
19 meeting.

20 MEMBER STEINMEIER: Ms. Steinmeier will second  
21 that.

22 ACTING CHAIR SHERWOOD: We have had a motion.  
23 We have a second.

24 Would you take roll on that?

25 MS. HIGASHI: Mr. Harrigan?

1 MEMBER HARRIGAN: Aye.

2 MS. HIGASHI: Mr. Lazar?

3 MEMBER LAZAR: Aye.

4 MS. HIGASHI: Mr. Smith?

5 MEMBER SMITH: Aye.

6 MS. HIGASHI: Ms. Steinmeier?

7 MEMBER STEINMEIER: Aye.

8 MS. HIGASHI: Ms. Williams?

9 MEMBER WILLIAMS: Aye.

10 MS. HIGASHI: Mr. Sherwood?

11 ACTING CHAIR SHERWOOD: Aye.

12 The motion passes. I'd like to thank everyone  
13 for coming up today on this issue.

14 MS. HIGASHI: This brings us to Item 4, another  
15 set of Proposed Parameters and Guidelines. This is on  
16 the "Sex Offenders: Disclosure by Law Enforcement  
17 Officers," better known as "Megan's Law." And this item  
18 will be presented by Cathy Cruz.

19 MS. CRUZ: Good morning.

20 ACTING CHAIR SHERWOOD: Good morning, Cathy.

21 MS. CRUZ: On August 23, 2001, the Commission  
22 adopted its Statement of Decision partially approving the  
23 "Sex Offenders: Disclosure by Law Enforcement Officers"  
24 test claim. The Commission determined that the test  
25 claim legislation, which concerns the registration of

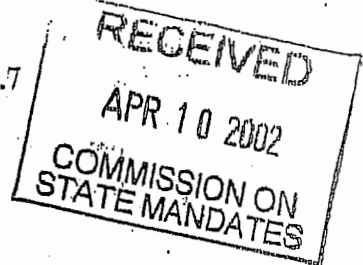


**BROWN ACT REFORM**

Government Code Sections 54952, 54954.2, 54954.3, 54957.1 and 54957.7

Statutes of 1986, Chapter 643

Statutes of 1993, Chapters 1136, 1137 and 1138

*Open Meetings Act/Brown Act Reform*

At the hearing on the proposed Parameters and Guidelines for Brown Act Reform, discussion was had regarding the training activities eligible for reimbursement. The Parameters and Guidelines as drafted by staff propose to only allow training as follows:

Train members of only those legislative bodies that actually hold closed executive sessions, on the closed session requirements of *Brown Act Reform*. If such training is given to all members of the legislative body, whether newly appointed or existing members, contemporaneously, time of the trainer and legislative members is reimbursable. Additionally, time for preparation of training materials, obtaining materials including training videos and audio visual aids, and training the trainers to conduct the training is reimbursable.

However, as was discussed at the hearing, there were two major changes wrought by Brown Act Reform. First of all, the Brown Act was expanded to a number of new agencies:

- Local bodies created by state or federal statute;
- Standing committees with less than a quorum of members of the legislative body that has a continuing subject matter jurisdiction or a meeting schedule fixed by formal action; and
- Permanent and temporary advisory bodies (except bodies of less than a quorum of the members of the legislative body).

Additionally, the new Brown Act legislation required all "legislative bodies" to perform a number of additional activities in relation to the closed session requirements of the Brown Act.

While the proposed training component addresses those legislative bodies which have closed session such that these bodies will follow the new closed session requirements, there is no training component for those new bodies which became subject to the Brown Act. As clearly demonstrated from the declarations filed herein, the membership and composition of those newly added legislative bodies generally is not aware of the rigorous requirements of the Brown Act nor the onerous penalties for failure to so comply. Additionally, the individuals generally appointed to the various legislative bodies do not have an extensive background in the Brown Act. Furthermore, many of the members of these legislative bodies are volunteers, who are not recompensed for the time

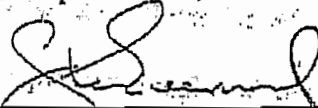
they devote to their civic duties. As a result, it is incumbent that these individuals be trained in the ramifications of the Brown Act.

For that reason, we suggest that the following language replace that suggested by staff pertaining to training:

Train members of only those legislative bodies that actually hold closed executive sessions on the closed session requirements of *Brown Act Reform*. Train members of those legislative bodies which consist of local bodies created by state or federal statute; standing committees with less than a quorum of members of the legislative body that has a continuing subject matter jurisdiction or a meeting schedule fixed by formal action; and permanent and temporary advisory bodies (except bodies of less than a quorum of the members of the legislative body) on the requirements of *Brown Act Reform*. If such training is given to all members of the legislative body, whether newly appointed or existing members, contemporaneously, time of the trainer and legislative members is reimbursable. In the event that the legislative members are not paid, only the time of the trainer is reimbursable. Additionally, time for preparation of training materials, obtaining materials including training videos and audio visual aids, and training the trainers to conduct the training is reimbursable.

The foregoing facts are known to me personally and if so required, I could and would testify to the statements made herein. I declare under penalty of perjury under the laws of the State of California that the statements made in this document are true and complete to the best of my personal knowledge and as to all matters, I believe them to be true.

Executed this 1<sup>st</sup> day of April, 2002, at Newport Beach, California, by:



Glen Everroad  
Revenue Manager  
City of Newport Beach

PUBLIC HEARING

COMMISSION ON STATE MANDATES

**RECEIVED**

MAY 03 2002

COMMISSION ON  
STATE MANDATES

---oOo---

ORIGINAL

TIME: 9:30 a.m.

DATE: Thursday, April 25, 2002

PLACE: State Capitol, Room 126

Sacramento, California

---oOo---

REPORTER'S TRANSCRIPT OF PROCEEDINGS

---oOo---

Reported by:

STACEY L. HEFFERNAN, CSR, RPR  
No. 10750

A P P E A R A N C E S

COMMISSIONERS PRESENT

ANNETTE PORINI, Chair  
Representative for B. TIMOTHY GAGE, Director  
State Department of Finance

JOHN S. LAZAR  
Acting Director of Office Planning and Research

WILLIAM SHERWOOD  
Representative for PHILIP ANGELIDES  
State Treasurer's Office

JOANN STEINMEIER  
School Board Member  
Arcadia Unified School District

JOHN R. HARRIGAN  
Chief Deputy State Controller, Administration  
Representative for KATHLEEN CONNELL, State Controller

SHERRY WILLIAMS  
Senior Legislative Analyst  
Office of Governor Gray Davis Planning and Research  
Representative for TAL FINNEY, Interim Director

COMMISSION STAFF PRESENT

PAULA HIGASHI, Executive Director

PAUL M. STARKEY, Chief Legal Counsel

ELLEN FISHMAN, Commission Counsel

KATHERINE TOKARSKI, Staff Counsel

SHIRLEY OPIE, Assistant Executive Director

NANCY PATTON, Staff Services Manager

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1 MS. STEINMEIER: Aye.  
2 MS. HIGASHI: Ms. Williams?  
3 MS. WILLIAMS: Aye.  
4 MS. HIGASHI: Mr. Harrigan?  
5 MR. HARRIGAN: Aye.  
6 MS. HIGASHI: Ms. Porini?  
7 CHAIRPERSON PORINI: Aye.  
8 MS. HIGASHI: All right.  
9 CHAIRPERSON PORINI: Thank you.  
10 Should we take a five-minute break here?  
11 (Whereupon a break was taken.)  
12 CHAIRPERSON PORINI: We'll go ahead and get  
13 started.  
14 MS. HIGASHI: We're now at Item 4, "Adoption of  
15 Proposed Parameters and Guidelines," the Brown Act Reform.  
16 This item was continued from the last hearing, and it will  
17 be presented by Ms. Shirley Opie, Assistant Executive  
18 Director.  
19 MS. OPIE: Thank you. Good morning.  
20 As Paula mentioned, this item was <sup>continued</sup>~~heard~~ at the  
21 conclusion of this last hearing to allow the claimant time  
22 to submit another written proposal for training. The  
23 claimant submitted the proposal on April 10th. Staff  
24 submits it and three other options for the Commission to  
25 consider.

1           Option One is the claimant's new proposal. This  
2 option includes training on the preparation and the posting  
3 of agenda items. As noted by staff at the March hearing,  
4 these activities are generally performed by staff members.  
5 The Open Meetings Act parameters and guidelines which  
6 reimburse some legislative bodies for the preparation and  
7 posting of agenda items do not include training, thus, if  
8 this option is adopted, only the new type of bodies that  
9 are required to comply with the agenda preparation and  
10 posting requirements under Brown Act Reform ~~which~~ would be  
11 eligible for reimbursement for this portion of the  
12 training. The bodies that were previously covered by Open  
13 Meetings would not be eligible.

14           The claimant previously advocated training on the  
15 entire Brown Act. The declaration submitted to support the  
16 claimant's new proposal also references Brown Act, thus,  
17 it's not clear that the claimant's new proposal limits  
18 reimbursement of the training to that specifically related  
19 to the Brown Act Reform.

20           Option Two is the staff recommendation. This was  
21 submitted to the Commission in the parameters and  
22 guidelines that were heard in March. It provides ongoing  
23 training. On the new Brown Act Reform, closed session  
24 activities for all legislative bodies that are subject to  
25 the closed session requirements, including the new types of

1 bodies that are required to prepare and post agenda items,  
2 it does not include training on preparing and posting  
3 closed session agenda items because these activities are  
4 generally performed by staff and there was no request for  
5 staff training. It is limited to training members of only  
6 those bodies that actually hold closed sessions.

7 Further, if the training encompasses more subjects  
8 than the activities related to the closed session  
9 requirements, only the pro rata portion is reimbursable.

10 Option Three is the claimant's original proposal:  
11 all the time of the trainer and legislative members would  
12 be reimbursable as well as time for preparation of  
13 materials for training on the Brown Act requirements,  
14 including the new requirements of Brown Act Reform. The  
15 entire Brown Act has never been the subject of a test  
16 claim, thus, staff finds providing training on the entire  
17 Brown Act goes beyond the scope of Commission's Statement  
18 of Decision.

19 Option Four: The Department of Finance opposes  
20 the inclusion of training because it was not included in  
21 the Statement of Decision; however, at the March hearing,  
22 Department of Finance staff recommended that if training is  
23 included that it be reimbursed on a one-time basis for new  
24 members.

25 The staff recommendation submitted to the

1 Commission for the March hearing included ongoing training  
2 on the closed session requirements based on the evidence in  
3 the record. The claimants submitted declarations that  
4 because most boards and Commission members are laypersons  
5 and not attorneys, ongoing training is needed.

6 Accordingly, staff found that ongoing training  
7 constitutes a reasonable method of complying with the  
8 mandate. Staff recommends the Option Two. This option is  
9 included in the proposed parameters and guidelines  
10 beginning on page 5. Based on the evidence in the record,  
11 staff finds that ongoing training is a reimbursable  
12 activity within the context of this mandate because it  
13 constitutes a reimbursable method of complying. Training  
14 is limited to the activities expressly required by this  
15 test claim statutes.

16 Staff also recommends that the Commission  
17 authorize staff to make any ~~non-substantive~~ <sup>non-substantive</sup> ~~non-standard~~ technical  
18 corrections to the parameters and guidelines following the  
19 hearing.

20 Will the parties please state their names for the  
21 record.

22 MS. STONE: Good morning, Chairman, Members of  
23 the Commission, Pamela Stone on behalf of the City of  
24 Newport Beach.

25 MR. EVERROAD: Glen Everroad, City of Newport

1 Beach.

2 MS. GEANACOU: Susan Geanacou, Department of  
3 Finance.

4 MR. PAULIN: Matt Paulin, Department of finance.

5 MR. SILVA: Shawn Silva, State Controller's  
6 Office.

7 CHAIRPERSON PORINI: All right.

8 Ms. Stone, do you want to begin?

9 MS. STONE: Yes, please. Thank you very much,  
10 Madam Chair.

11 I think one of the main issues that has not been  
12 understood by the staff is, yes, staff, too, in various  
13 sundry boards and Commissions, type up the actual agenda,  
14 however, the issue is what goes into the agenda is of  
15 critical importance as well as how that particular agenda  
16 item is worded.

17 When you had brought back in, with this particular  
18 legislation, brand new boards and Commissions, as I  
19 mentioned last time as we set out in supplemental  
20 materials, we were dealing with a number of laypersons who  
21 didn't understand why they couldn't talk about anything  
22 that was not on the agenda and didn't understand that if  
23 you had a member of the public raise an issue that is not  
24 on the agenda why it could not be heard and how to get  
25 items that they wished to discuss on the agenda.

1           Contemporaneously, you also have individuals who  
2 do not want particular items to be well-publicized to the  
3 public and wish to have the agenda item description worded  
4 in such a manner that know one will know what they're  
5 really, in fact, doing. You know, when you're dealing with  
6 local government, it is a substantially different  
7 experience than one would have with the Commission on State  
8 Mandates where it's very easy to talk about a test claim,  
9 parameters and guidelines, statewide cost estimate,  
10 incorrect reduction claim where these are the items that  
11 we're going to be discussing in closed session.

12           It's much more clear-cut and defined than what you  
13 have when you're dealing with local government, and,  
14 because have competing interests sitting on various boards  
15 and commissions, you may have one particular board member  
16 trying to make sure that there's as much public discussion  
17 on an item as possible and another board member who would  
18 just as soon that nobody ever hears about that particular  
19 issue. So when it comes to the issue of agenda  
20 preparation, what goes into an agenda, how to get matters  
21 agendized, this is very important for your new people that  
22 were brought into the Brown Act Reform.

23           I think the way to look at Brown Act Reform is it  
24 basically did two things: One is it completely revamped  
25 how you prepared closed session agendas, what has to be in

1 the agenda, what could or could not be heard in closed  
2 session, and the mechanisms by which that was to transpire.

3 The second major thing that was accomplished by  
4 Brown Act Reform is to bring in all these strange and  
5 auxiliary boards and commissions that were never previously  
6 exposed to the Brown Act before, most of which you either  
7 have staff that are appointed to it or you have volunteers  
8 and laypeople from the community.

9 And so when we're asking that the new board  
10 members be trained, it is incumbent that they know that  
11 they only discuss that which is on the agenda. If they  
12 want to discuss something, they must instruct staff to put  
13 it on the agenda. They can only discuss things which are  
14 on the agenda. The fact that staff is the one that types  
15 it up is not the critical issue; the critical issue is how  
16 the agenda controls what's in the meeting.

17 And, for that reason, we would request that you  
18 adopt Option One.

19 Thank you very much.

20 CHAIRPERSON PORINI: All right. Glen, any  
21 comments?

22 MR. EVERROAD: Well, just for the record, I'd  
23 like to relate that at the City of Newport Beach we do  
24 train whole staff and legislative bodies to provide full  
25 disclosure on all agendas. Other than that, I think Pam

1 did a very fine job representing our position.

2 CHAIRPERSON PORINI: Department of Finance,  
3 Ms. Geanacou or Mr. Paulin.

4 MS. GEANACOU: Good morning, Commission members.

5 Department of Finance would reiterate its position  
6 that we took at the last Commission meeting that because  
7 training is not included in the Commission's adopted  
8 Statement of Decision that it not be included now at the  
9 parameters and guidelines phase. If, in the alternative,  
10 the Commission is considering adopting training as an  
11 element of the P's and G's today, that you seriously  
12 consider and adopt Option Four which limits training to a  
13 one-time basis per new member particularly, specifically  
14 only and limited to the Brown Act activities that are  
15 required by this test claim legislation.

16 CHAIRPERSON PORINI: All right. Mr. Paulin,  
17 anything?

18 MR. PAULIN: Nothing further to add.

19 CHAIRPERSON PORINI: All right.

20 Mr. Silva.

21 MR. SILVA: One concern we have with the language  
22 as proposed, the training, is that I believe we're starting  
23 to shift from training to conducting activity that a person  
24 may not have the knowledge, skill or experience to do the  
25 training on what the law is and educating someone on the

1 law, and we believe that there's a distinction between the  
2 two, that if there's an activity that one would not  
3 reasonably be expected to know how to do, that training is  
4 appropriate, but to know the law is an obligation that  
5 every citizen has, and we don't believe that training on  
6 knowing the law is a state mandate. It's an obligation of  
7 all people in this state. You can't go before the criminal  
8 courts and say, "Sorry. I didn't know that law existed."

9           There's a distinct difference between training,  
10 and I think here the one activity that potentially is kind  
11 of a hybrid is the generation of those items. Yes, every  
12 one knows how to use the English language, but, when you  
13 get to legalese, it's really a different form, and training  
14 on that aspect, we believe, is training on an activity;  
15 however, talking about the fact -- telling someone that  
16 they cannot discuss an item which is not on the agenda is  
17 teaching the law, which we don't believe is a reimbursable  
18 activity. It's an ongoing obligation of everyone to know  
19 the law.

20           With that, we would essentially follow with  
21 Finance's position that we don't believe training, except  
22 for that narrow exception, should be included or if the  
23 staff -- I'm sorry, if the Commission decides to go with  
24 one of the options that No. 4 would be appropriate.

25           CHAIRPERSON PORINI: Questions or comments from

1 members?

2 Mr. Lazar.

3 MR. LAZAR: I have a couple of questions that I'd  
4 like the staff to respond to the claimant's contention, and  
5 then, secondly, with respect to Controller's Office  
6 comments about presuming people know the law and they  
7 should know. We continually are being advised and having  
8 to advise commissions and boards and things in the city  
9 that I'm in about the Brown Act and what the ramifications  
10 are if they're violated. So I -- unfortunately, at the  
11 state level and the Legislature, they don't have to abide  
12 by that, apparently, but down in local government it's part  
13 of the life.

14 CHAIRPERSON PORINI: And maybe I could just  
15 provide some clarification. We do have the Bagley-Keene  
16 Act which some would suggest is a little more restrictive  
17 than the Brown Act, so my sympathies.

18 MR. STEINMEIER: Sure. John just sees the video  
19 and signed off on it.

20 MR. LAZAR: Every year.

21 CHAIRPERSON PORINI: All right.

22 MS. STEINMEIER: Let's just be clear about that.

23 CHAIRPERSON PORINI: All right. Staff, comment?

24 MS. OPIE: Okay. With respect to the comments  
25 about training on the preparation and posting of agenda

1 items, as far as the new material, the new proposal that  
2 was submitted by the claimant, you know, we didn't see that  
3 that was, you know, something that was specific there, and,  
4 you know, it was just the combination between the language  
5 that was submitted and the declaration supporting it that  
6 caused us concern about what, exactly, they were trying to  
7 claim here, under training, whether it was limited strictly  
8 to the Brown Act Reform or whether it was broader than that  
9 as discussed at the last hearing, and it included all the  
10 Brown Act. So there was just no distinction about that, in  
11 the proposal that was submitted.

12 CHAIRPERSON PORINI: Okay. Ms. Stone, do you have  
13 any further --

14 MS. STONE: I beg to disagree, and you'll note  
15 under Option One we have training new members of the new  
16 bodies on the specific requirements of Brown Act Reform; it  
17 was very, very specific.

18 CHAIRPERSON PORINI: Mr. Harrigan.

19 MR. HARRIGAN: I just have a question for the  
20 Department of Finance and also the Controller's Office.

21 You say on a one-time basis -- training should be  
22 on a one-time basis, training each new member, but then it  
23 goes down to the body of your proposal, and it says, "If  
24 such training is given to all members of the legislative  
25 body, whether newly appointed or existing, it's

1 reimbursable."

2 So what's the significance of the one time --

3 MS. STEINMEIER: There's a --

4 MR. HARRIGAN: -- is what I'm trying to figure  
5 out.

6 MR. PAULIN: A point of clarification. I believe  
7 that we were proposing one-time training for new or  
8 existing members then going forward if new members came  
9 onto the legislative body that they would also receive that  
10 training.

11 MR. HARRIGAN: Say it again.

12 MR. PAULIN: I guess we're not sure as to what  
13 your --

14 MR. HARRIGAN: As to what my question is?

15 MR. PAULIN: Yes.

16 MR. HARRIGAN: Well, I guess my question is: It  
17 says on a one-time basis training each new member, then  
18 down to the end of the next sentence it said, hey, whether  
19 they're newly appointed or existing members, it's all  
20 reimbursable.

21 So isn't there a conflict between on a one-time  
22 basis?

23 CHAIRPERSON PORINI: Mr. Silva, did you want to  
24 add some clarification?

25 MR. SILVA: Yes, if I could address -- at least

1 from our office's perspective, the distinction would be  
2 that it sounds like some of the other proposals would  
3 require that training be conducted each time the body is  
4 reconstituted, so maybe every two years. This, we believe,  
5 would only cover if there's a new member. And the -- and  
6 so if a person has been reelected and the body is  
7 essentially the same group of people that existed before,  
8 there's no need to redo training.

9           If there's a new member, then that new person  
10 would need training, and it seems as long as there's only  
11 one presentation that the cost is the same. Whether you  
12 make a presentation to one person or to twenty, your costs  
13 are the same. So that's how we interpret the one-time cost  
14 phrase.

15           MR. HARRIGAN: Okay.

16           MS. GEANACOU: And I think for clarification, if I  
17 may, I think this -- our Option Four presumes that there is  
18 at least one new member in the room receiving training at  
19 the time this is occurring.

20           MR. HARRIGAN: Thank you.

21           CHAIRPERSON PORINI: Okay. Other questions or  
22 comments from members?

23           Ms. Opie.

24           MS. OPIE: I just wanted to make one other  
25 comment about the training on the preparation and posting

1 of the agenda. In the Statement of Decision, and it is  
2 reflected in the P's and G's, it lists out very, I think,  
3 specifically what the reimbursable activity is, and it's  
4 preparing a simple agenda. So the -- so the activity is  
5 preparing the agenda item.

6 CHAIRPERSON PORINI: Okay. Other questions or  
7 comments?

8 (No response.)

9 CHAIRPERSON PORINI: Do I have a motion?

10 MS. STEINMEIER: Yes.

11 CHAIRPERSON PORINI: Ms. Steinmeier.

12 MS. STEINMEIER: I'd like to move Option Two, the  
13 staff's recommendation.

14 CHAIRPERSON PORINI: All right. I have a motion.  
15 Is there a second?

16 MR. LAZAR: Second.

17 CHAIRPERSON PORINI: There's a motion and a  
18 second.

19 Any further discussion?

20 (No response.)

21 CHAIRPERSON PORINI: May I have roll call.

22 MS. HIGASHI: Mr. Sherwood?

23 CHAIRPERSON PORINI: Do you want to -- go on with  
24 the action.

25 MS. HIGASHI: Ms. Steinmeier?

1 MS. STEINMEIER: Aye.  
2 MS. HIGASHI: Ms. Williams?  
3 MS. WILLIAMS: No.  
4 MS. HIGASHI: Mr. Harrigan?  
5 MR. HARRIGAN: Aye.  
6 MS. HIGASHI: Mr. Lazar?  
7 MR. LAZAR: Aye.  
8 MS. HIGASHI: Mr. Sherwood?  
9 MR. SHERWOOD: Aye.  
10 MS. HIGASHI: Ms. Porini?  
11 CHAIRPERSON PORINI: No.  
12 MS. HIGASHI: Motion carries.  
13 MS. STONE: Thank you very much.  
14 CHAIRPERSON PORINI: All right.  
15 MS. HIGASHI: That brings us to Item 5, which is  
16 the staff report on "Implementation of School Bus Safety II  
17 Audit Recommendations," and I just wanted to note that  
18 Marianne O'Malley is here, as well, if anyone has any  
19 questions regarding the LAO draft proposal that's attached  
20 to this agenda item.  
21 CHAIRPERSON PORINI: Mr. Harrigan?  
22 MR. HARRIGAN: Madam Chair, before we leave the  
23 item, there's a white piece of paper here that says  
24 Item 4 -- it says it's a sealed proposal for source  
25 documentation; is that Item 4?

REPORTER'S CERTIFICATE

---oOo---

STATE OF CALIFORNIA )  
COUNTY OF SACRAMENTO )  
\_\_\_\_\_ )

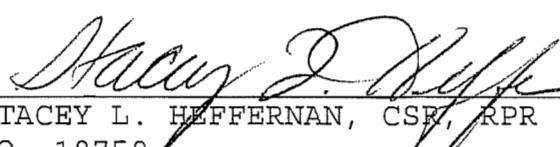
I, STACEY L. HEFFERNAN, certify that I was the official court reporter for the proceedings named herein; and that as such reporter, I reported to the best of my ability, in shorthand writing, of those proceedings; that thereafter caused my shorthand writing to be reduced to typewriting, and the pages numbered 1 through 101, herein constitute a complete, true and correct record of the proceedings:

PRESIDING OFFICER: ANNETTE PORINI, CHAIRPERSON

JURISDICTION: COMMISSION ON STATE MANDATES

CAUSE: APRIL 25, 2002 MEETING

IN WITNESS WHEREOF, I have subscribed this certificate at Sacramento, California, on this 3rd day of May, 2002.

  
STACEY L. HEFFERNAN, CSR, RPR  
NO. 10750



## MINUTES

### COMMISSION ON STATE MANDATES

State Capitol, Room 126  
Sacramento, California  
April 25, 2002

Present: Chairperson Annette Porini  
Representative of the Director of the Department of Finance  
Member William Sherwood  
Representative of the State Treasurer  
Member Sherry Williams  
Representative of the Director of the Office of Planning and Research  
Member John Harrigan  
Representative of the State Controller  
Member Joann Steinmeier  
School Board Member  
Member John Lazar  
City Council Member  
Vacant: Public Member

### CALL TO ORDER AND ROLL CALL

Chairperson Porini called the meeting to order at 9:30 a.m.

### APPROVAL OF MINUTES

Item 1 March 28, 2002

Upon motion by Member Harrigan and second by Member Sherwood, the minutes were adopted. Chairperson Porini abstained.

### HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7

#### TEST CLAIM

Item 2 *Pupil Promotion and Retention*, 98-TC-19  
San Diego Unified School District, Claimant  
Education Code Sections 37252, 37252.5, 48070, and 48070.5  
Statutes of 1998, Chapters 742 and 743, et al.

Katherine Tokarski, Commission Counsel, presented this item. She stated that the claimant, San Diego Unified School District, submitted a test claim alleging a reimbursable state-mandated program for school districts to: 1) adopt and implement, for the first time, policies regarding the promotion and retention of pupils between specified grade levels; 2) offer supplemental instructions to students who have been retained pursuant to those promotion and retention policies; and 3) offer mandatory summer school to those students identified as not meeting the district's adopted proficiency standards. The claimant concluded that none of the Government Code section 17556 exceptions to finding costs mandated by the state applied to

this test claim. Also, the claimant certified that any funds appropriated for the test claim legislation were insufficient to fund the mandate.

Ms. Tokarski submitted staff's finding that activities associated with school district pupil promotion and retention policies and supplemental instruction constitutes a program pursuant to article XIII B, section 6 of the California Constitution by requiring school districts offering public education to perform new activities or tasks. She added that when compared to prior law, much of the test claim legislation requires a school district to engage in new activities or higher levels of service. The Department of Finance maintained that for much of the test claim legislation, there are no costs mandated by the state since funding was provided in the budget. However, funding from another source does not preclude a finding of a reimbursable state-mandated program if the funds were not appropriated as part of the test claim legislation and "sufficient to fund the cost of the state mandate." Instead, the parameters and guidelines shall allow for these funds to offset any costs incurred from the mandated activities.

Therefore, staff concluded that the test claim legislation requires new activities resulting in a reimbursable state-mandated program. Staff recommended that the Commission approve the test claim for the specified activities.

Parties were represented as follows: Art Palkowitz, representing San Diego Unified School District; Carol Berg, representing Education Mandated Cost Network; and Ramon de la Guardia and Matt Aguilera, for the Department of Finance.

Ms. Berg supported staff's recommendation.

Mr. Palkowitz agreed with staff's analysis.

Mr. de la Guardia disagreed with staff's interpretation of the exemption for offsetting funds, asserting that it was too literal that the actual statute has to contain the offsetting funds language. Also, he stated that in this case, there is no dispute that there was funding for these programs. He argued that evidence had been presented showing that not all of the funds available were claimed, which creates a presumption that there was sufficient funding. He noted that during the budget process, the Department of Finance works closely with all the affected parties in the Pupil Summer School and Supplemental Educational Programs to develop a rate sufficient to cover the costs of the mandate.

Mr. de la Guardia maintained that part of the problem was in the nature of the claim. He explained that there is a claim for costs in excess of \$200 with a series of activities, one of which is a one-time activity to develop a pupil retention policy in 1983. He noted staff's conclusion that the earliest period for reimbursement was fiscal year 1997-1998. Clearly there is a gap. He stated that the exemption in Government Code section 17556, subdivision (e), was created so that developing parameters and guidelines would be unnecessary if the Commission would require more specific claims from claimants in situations where there is funding and a limited time period. He also noted staff's conclusion that the claims only run for two and a half years, from 1997 to 2000, thus there is a manageable period of time to detail the claims. Therefore, he asserted that the Commission should require more specificity from the claimant in this case, and it should revisit the issue of the exemption for accompanying funds for a mandate.

Mr. Aguilera supported Mr. de la Guardia's comments.

Member Steinmeier requested that the claimant comment regarding the issue of the gap between the original policy date, 1983, and the starting date of the statute, 1997.

Mr. Palkowitz agreed that the reimbursement period begins in 1997, the starting date of the statute. However, he noted that there was no appropriation allocation in the test claim. He added that there was funding that clearly should be offset, but he argued that it is an issue that should be addressed during the parameters and guidelines phase because it does not affect a determination that this test claim constitutes a reimbursable state-mandated program.

Member Steinmeier commented that the primary issue was whether the law actually created a new program or higher level of service, and secondly, what offsetting funding was there. She noted that some school districts use state money as well as federal money for some of the remediation. Regarding the issue of mandatory summer school, she noted her belief that there was a cap. Ms. Berg confirmed that there was. Member Steinmeier maintained that for some school districts the cap is sufficient, and for others it is not.

Mr. de la Guardia agreed that there was a cap during part of the test claim period, but it was removed in January 2000. He maintained that this was the reason why staff limited the reimbursement period.

Member Harrigan requested clarification regarding available funds that were not claimed. Mr. de la Guardia noted that the Department of Education's records indicated this, which Mr. Aguilera confirmed. Mr. Aguilera added that the Department of Education could request a deficiency in the event funds provided in the budget are insufficient. He noted that this process allows state policy makers to find a fund source to provide resources for instructional hours provided.

Mr. Palkowitz stated that he had no knowledge of what other districts claimed throughout the state. However, he asserted that the funding his district received was insufficient. He added that if a district did not receive enough funding, then they are entitled to reimbursement for the excess amount. He maintained that this funding issue is a matter that can be more appropriately addressed during the parameters and guidelines phase.

Mr. Aguilera argued that to date, they have no records indicating that there were claims exceeding the provided funds. He answered Chairperson Porini's question, clarifying that no deficiency had been filed on behalf of San Diego Unified School District.

Ms. Berg noted that the funds were allocated as part of the statute. She commented that the claimant did not file a deficiency because there is no process in place at this period of time.

Mr. de la Guardia maintained that the claimant did not claim all of the funds available to them. He explained that there are various programs related to pupil retention and they do not know exactly what the district is claiming and if funds are still available. Therefore, he asserted that the issues could be narrowed down if the claims were more specific.

Mr. Palkowitz noted that the test claim legislation requires a district to adopt a new policy, provide remedial instruction, and provide instruction to those students who are retained. He

repeated that the funding issue is a focus for the parameters and guidelines phase and would not affect how the Commission decides on this test claim.

Regarding the issue of why the available funds were not used, Member Steinmeier noted that all the districts are different. Some districts may have enough summer school money while others do not. She added that summer school is not the only way to help students meet the district's adopted proficiency standards. She explained that if a district has a lot of remedial need, summer school money is capped. Therefore, rather than waiting for a student to fail at the end of a semester, some districts help students throughout the semester by providing help before or after school or during Saturday school. She also agreed with Ms. Berg regarding a process not being in place for school districts to file a deficiency with the Department of Education.

Member Steinmeier maintained that the focus should be on whether the statute specifically mandated a new or higher level of service on school districts and whether there was enough offsetting funding. Member Harrigan requested clarification, which was provided by Member Steinmeier.

Mr. Palkowitz noted that funding may or may not be available in the future, which is another issue. Chairperson Porini clarified that funding in the future would be from the state budget process and is not specifically related to the test claim legislation. Mr. Palkowitz and Ms. Berg agreed.

Mr. de la Guardia commented that the future is not involved since staff limited remedial education only through January 2000. Ms. Tokarski explained that this is true for the summer school program pursuant to Education Code section 37252. She noted that the code section was substantially amended operative January 1, 2002. Therefore, the reimbursement period for the program, which is for students in grades seven through twelve that did not meet the adopted standards of proficiency, is limited to July 1, 1997 to December 31, 1999.

Further, Ms. Tokarski explained that the second statute in the test claim, Education Code section 37252.5, is a different program that requires supplemental instruction for students who have been retained in grades two through nine. She maintained that this statute is ongoing, and thus, is not limited. Ms. Berg added that it is also an uncapped program funded in the budget.

Member Steinmeier asked a hypothetical question regarding subsequent amendments to the statute or funding reductions. Ms. Tokarski provided clarification. Member Steinmeier noted that as long as the mandate is not substantially amended, there is no reason districts would continue to claim without showing offsets.

Mr. Aguilera noted that in the event the state does not have funding for a program, the program requirements are typically waived, or at least it is considered when policy decisions are made.

Member Steinmeier made a motion that was seconded by Member Lazar, to approve staff's analysis. The motion carried 5-1, with Chairperson Porini voting "No."

## INCORRECT REDUCTION CLAIM

- Item 3      *Investment Reports*, 00-9635802-I-01  
County of Los Angeles, Claimant  
Government Code Section 53646, subdivisions (a), (b), and (e)  
Statutes of 1995, Chapter 783; Statutes of 1996, Chapters 156 and 749

Ellen Fishman, Commission Counsel, presented this item. Ms. Conny Jamison, Expert Consultant for the Commission, was with Ms. Fishman. Ms. Fishman stated that the County of Los Angeles filed this incorrect reduction claim after the State Controller's Office reduced its reimbursement claim for fiscal year 1996-1997 from \$308,252 to \$6,502, and for fiscal year 1997-1998 from \$327,512 to \$325. She indicated that all claimed costs associated with daily/monthly accounting activities and computer software were reduced. The State Controller's Office noted on the reimbursement claims that "daily/monthly accounting duties are not mandated. Only the quarterly report of investments is mandated for the incremental cost of preparing this report." She noted the State Controller's assertion that the claimant's reimbursement claims were adjusted based on the Commission's statement of decision and parameters and guidelines. She also noted the claimant's contention that the costs claimed were necessary to produce the quarterly report of investments required by Government Code section 53646.

Ms. Fishman outlined the following four issues for the Commission's consideration in determining whether the State Controller's Office incorrectly reduced the claim:

1. Is the State Controller's reduction of staff time to eight hours per quarter to accumulate and compile the data necessary to prepare and render the quarterly report of investments correct?

Staff finds, in agreement with the Commission's expert consultant, that the reduction of staff time to prepare the quarterly report is neither correct nor reasonable given the size and complexity of the claimant's investment pool.

2. If the challenged activities are mandated, are they reimbursable within the meaning of the test claim statute, the Commission's statement of decision and parameters and guidelines, and the State Controller's claiming instructions?

Staff finds, in agreement with the Commission's expert consultant, that the challenged activities, including the use of subsidiary ledgers, are reimbursable to the extent documented by the claimant as necessary to produce the quarterly report of investments four times a year.

3. If the challenged activities are derived from the Treasurer's common law fiduciary duty, preexisting law, and preexisting business concerns, are they reimbursable?

Staff finds that the Legislature enacted an extensive statutory scheme to provide the requisite protections for county investments not found in the common law fiduciary duty as set forth, or in Probate Code section 16040, subdivision (b). In addition, the challenged activities of entering and managing data to be included in the mandated quarterly report of investments are not required by the common law fiduciary duty. Rather, they are new activities under the test claim legislation, and thus, are

reimbursable. None of the statutes cited by the State Controller's Office addressed the specific requirements of the quarterly report of investments and are therefore irrelevant. Also, neither the Constitution nor statutes discuss "business concerns" as a standard for denying reimbursement to local governments for costs incurred to implement a new program, and therefore, staff finds that the challenged activities are reimbursable under this mandate.

4. Is the use of investment software reimbursable?

Staff finds, in agreement with the Commission's expert consultant, that the use of investment software is consistent with the parameters and guidelines and is a reasonable method of complying with the mandate. Therefore, to the extent that the costs are directly related to the production of the quarterly investment reports, the use of investment software is reimbursable.

Staff recommended that the Commission adopt the staff analysis, approve the incorrect reduction claim, and request the State Controller's Office to reinstate all costs.

Parties were represented as follows: Leonard Kaye, representing the County of Los Angeles; Chris Rieger and Susanna Ruiz, for the Los Angeles County Treasurer's Office; Greg Rogers, for the Department of Finance; and Shawn Silva, for the State Controller's Office.

Mr. Kaye concurred with the staff analysis and recommendation. However, he noted a difference of opinion regarding the point-in-time concept. He explained that the County of Los Angeles does not merely observe compliance on the last date that the quarterly report is issued, but rather, the report is a summary of compliance for all transactions during the entire report period.

Mr. Rogers had no concerns with the staff recommendation. He agreed that subsidiary ledgers were necessary to produce the quarterly report.

Mr. Silva indicated that the State Controller's Office had two major concerns with the staff analysis: 1) the issue of the quarterly report versus daily or frequent data input and management, and 2) staff's reliance on California Code of Regulations section 1183.1.

Regarding the first issue, Mr. Silva asserted that entering transactions in a computer and reconciling them is different from quarterly reporting. He noted that the State Controller's Office does not deny that the quarterly report is a mandate. He also agreed that there was a certain degree of arbitrariness in the reductions. However, he argued that frequent data input and data management is not required by statute, but is driven by the specific limitations on certain investments and by a desire to maximize returns. He added that daily data management is a preexisting requirement on a treasurer. He maintained that the quarterly report is a point-in-time report, not a daily report.

Further, Mr. Silva asserted that neither the statutes nor discussions of a fiduciary duty in the staff analysis address the quarterly report. He also asserted that the fiduciary duty and/or statutory duties mandate or logically require the frequent entry of data, but not subsequent reporting. To support his position, Mr. Silva quoted Government Code section 26905, as well as comments from the expert consultants, Dr. Tootelian and Ms. Jamison. Both consultants submitted in their reports that with the size of the County of Los Angeles, frequent entry of

data is required. Mr. Silva maintained that the common law does apply in that a treasurer is a trustee of the public funds, and there is a concept that a trustee holds a fiduciary duty.

With respect to the second issue, Mr. Silva asserted that staff's reliance on California Code of Regulations section 1183.1 is misplaced and inapplicable at this stage in the proceedings because the code section is found under article III, entitled "Test Claims," whereas incorrect reduction claims are found under article VIII, entitled "Other Hearings."

Member Sherwood expressed interest in this claim because of his involvement in running the state portfolio and his experience as a member of the Task Force on Local and State Investment Practices. Based on his experience and knowledge, he provided a scope of the operation and detailed information about the investments process.

Member Sherwood stated that there were statutes in place before 1995-1996, which directly relate to reporting on a day-to-day basis, that deal with the types of investments that can be purchased. He explained that these statutes placed certain restrictions on investments that would require any investment manager to list on some type of subsidiary ledger what they hold in their portfolio each day to ensure they stayed in compliance with the statutes. If they are not within the statute, it would be breaking the law. He added that cost and market information also needs to be tracked in case the security needs to be sold later. He noted that some of the information being tracked is the same information that, on a quarterly basis, at a point-in-time, is required for the quarterly report. However, he also noted that some of the information is not required for the quarterly report, and thus, only a portion of the daily reporting should be reimbursable.

Also, Member Sherwood submitted that market evaluations were important. He added that local governments should clearly be compensated for gathering this information, as it was not previously required.

Mr. Kaye commented that the County of Los Angeles' claim only represented a small fraction of the costs to run the entire enterprise.

Member Sherwood provided a discussion of the cash flow analysis requirement. For a fiduciary or prudent man, he indicated that some indication of cash flow is necessary to run an investment program. Depending on one's investment philosophy and cash flow, there will be costs involved. However, he explained that some of those costs are incurred to meet the requirements of other statutes, and thus, all costs for cash flow cannot be written off on this particular mandate. Nonetheless, Member Sherwood agreed that the State Controller's reductions might have been harsh because there were costs mandated upon local governments. He added that it would be difficult for the claimant to substantiate its claim and also for the State Controller's Office to decide what is reasonable.

Mr. Kaye agreed. He asserted that there was clearly a major difference of opinion and that they would like to move forward to negotiate under the guidance of the Commission's decision. He maintained that the costs claimed were well within the purview of the claiming instructions.

Member Harrigan noted Mr. Silva's statement regarding possible arbitrariness associated with the claim. As a member of the State Controller's Office, he indicated that they were open to re-examining other information to support the claim.

In addition, Member Harrigan asked the claimant if its claim would go away if the legislation did not exist today. Mr. Kaye answered no, clarifying that various statutes have some bearing on this legislation. He noted that they have attempted to establish a relationship between the reimbursable costs under this claim's parameters and guidelines, claiming instructions, and the underlying mandate. He repeated that their claim would be substantially greater if they charged the entire cost of the program.

Member Steinmeier requested clarification from Member Sherwood about the subsidiary ledger. He provided that clarification. Member Steinmeier then specified that the question before the Commission was whether the State Controller's Office incorrectly interpreted the parameters and guidelines, and thus, incorrectly reduced the claimant's claim. She noted that the parameters and guidelines may need to be amended.

Ms. Fishman noted that a request to amend the parameters and guidelines is currently pending. She added that some of the issues being discussed relate to the issues presented in the parameters and guidelines amendment. She maintained that the issue here was whether the State Controller's Office incorrectly reduced the claim based on the existing parameters and guidelines and claiming instructions.

Ms. Jamison commented that she originally thought the claimant should not be reimbursed since they had to do all those things anyway. However, after reviewing the parameters and guidelines, she noted that it did not include an exception. Therefore, she maintained that to the extent the activities are mandated, the claimant should be reimbursed.

Member Sherwood indicated that he was in partial agreement with staff's findings, although uncertain whether the current proceeding would provide the State Controller's Office with enough direction to make a decision when re-examining the claims. He asserted that some of staff's findings regarding "challenged activities" were unclear and still open to interpretation. He noted that some of the activities should only be partially reimbursable.

Ms. Fishman explained that staff concluded the claim was incorrectly reduced and that there are activities required to produce the quarterly report that are reimbursable. She added that the parties would have to meet to determine which activities are specifically required to produce the quarterly report and provide the information required by the statute, and which are not. She noted that the challenged activities primarily involved the data entry and collection activities. She also mentioned that Ms. Jamison was hired to work with the Commission in order to gain additional information and guidance as to what the required activities may be.

Member Steinmeier commented that there was clearly an incorrect reduction, however the amount is still to be determined. Both Member Steinmeier and Member Sherwood expressed concern that the testimony and discussion did not clarify any issues, particularly because the statute itself is vague.

Paul Starkey, Chief Legal Counsel, suggested three options. One option was to take back the staff analysis and based on testimony given, develop something that would provide more

direction. However, he noted that unresolved disputes may still exist. The second option is to, if the parties agreed, hold and continue this item until adoption of the parameters and guidelines amendment. This option could provide additional information that would allow the parties to resolve the dispute. The third option is to have the parties withdraw the claim without prejudice, negotiate, and resolve the issue. Mr. Starkey suggested the third option because there were areas of agreement that the claim was incorrectly reduced.

Chairperson Porini commented that the parameters and guidelines were clearly inadequate and require clarification. She stated that she was leaning toward the first and second options.

Member Steinmeier submitted that the only options available were one and two because the third option was really up to the claimant.

Chairperson Porini requested the claimant's input. Mr. Kaye stated that the parties could enter into some sort of stipulated agreement regarding the incorrect reduction claim. However, he asserted that the matter should not end there. He maintained that the analysis still needs to be carried on. He also agreed that the parameters and guidelines need to be clarified, and he indicated that he would like to participate in that process.

Mr. Silva stated that he did not have a problem with discussing the issues to try to reach resolution on an informal level. He also agreed that even if it will not affect this incorrect reduction claim, the parameters and guidelines amendment should proceed because it could provide some clarification.

Member Steinmeier made a motion to postpone the incorrect reduction claim and proceed with the parameters and guidelines amendment. With a second by Member Harrigan, the motion carried unanimously.

## **INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8**

### **ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES**

- Item 4      *Brown Act Reform*, CSM 4469 (Continued from March hearing)  
City of Newport Beach, Claimant  
Statutes of 1993, Chapter 1136; Statutes of 1993, Chapter 1137; Statutes of 1993, Chapter 1138; Statutes of 1994, Chapter 32 and Consolidation with *Open Meetings Act*, CSM 4257, Statutes of 1986, Chapter 641

Shirley Opie, Assistant Executive Director, presented this item. She noted that this item was continued from the March hearing to allow the claimant time to submit another written proposal for training. This proposal was submitted on April 10<sup>th</sup>. Staff presented four options for the Commission to consider.

Option one was the claimant's new proposal, which includes training on the preparation and posting of agenda items. Ms. Opie noted that staff members generally perform these activities. She explained that the Open Meetings Act Parameters and Guidelines did not include training, and thus, if this option were adopted, only the new types of bodies required to comply with the agenda preparation and posting requirements under Brown Act Reform would be eligible for reimbursement for this portion of training. The legislative bodies previously covered by Open

Meeting Act would not be eligible. She further indicated that since the claimant had advocated training on the entire Brown Act and because the declaration supporting the claimant's new proposal also references Brown Act, it is not clear whether the claimant's proposal limits reimbursement to training specifically related to Brown Act Reform.

Option two was staff's recommendation submitted to the Commission in the proposed parameters and guidelines heard at the March hearing. Ms. Opie explained that this option provides ongoing training on the new Brown Act Reform closed session activities for all legislative bodies subject to the closed session requirements, including the new types of bodies required to prepare and post agenda items. She explained that this would not include training on the preparation and posting of closed session agenda items since these activities are generally performed by staff. She noted that there was no request for staff training. This option limits training to the members of only those bodies that actually hold closed sessions. In addition, if the training encompasses more subjects than the activities related to the closed session requirements, only the pro-rata portion is reimbursable.

Option three was the claimant's original proposal, which would provide reimbursement for the trainer and legislative members' time, as well as time to prepare the training materials for the Brown Act requirements, including the new requirements of Brown Act Reform. Ms. Opie maintained that the entire Brown Act has never been the subject of a test claim, and thus, staff finds that providing training on the entire Brown Act goes beyond the scope of the Commission's statement of decision.

Option four was the Department of Finance's recommendation. The Department of Finance opposed the inclusion of training because it was not included in the statement of decision. However, if training is included, they recommended that it be limited to one-time reimbursement for each new member.

Ms. Opie noted that staff's recommendation included ongoing training based on the evidence in the record. She noted that the claimant submitted declarations indicating that ongoing training was necessary since most board and commission members are laypersons and not attorneys. Therefore, staff found that ongoing training constituted a reasonable method of complying with the mandate. Accordingly, staff recommended that the Commission adopt option two, which limited training to those activities expressly required by the test claim statutes. Staff also recommended that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

Parties were represented as follows: Pam Stone and Glen Everroad, representing the City of Newport Beach; Matt Paulin and Susan Geanacou, for the Department of Finance; and Shawn Silva, for the State Controller's Office.

Ms. Stone stated that staff members do type up the agenda, but she asserted that the critical issue is what goes into the agenda and how it is worded. She explained that many of the board and commission members are laypersons who need to understand that an item cannot be discussed if it is not on the agenda. She added that because of competing interests sitting on various boards and commissions, an individual member may want a particular agenda item description worded a particular way. She maintained that part of agenda preparation is getting matters onto the agenda, which is important for the new bodies required to comply with the

requirements under Brown Act Reform. She asserted that the Brown Act Reform changed the way closed session agendas are prepared, and expanded the types of boards and commissions required to comply with the notice and agenda requirements that were not previously exposed to the Brown Act. Therefore, she requested that the Commission adopt option one.

Mr. Everroad agreed with Ms. Stone's comments. He added that at the City of Newport Beach, whole staff and legislative bodies are trained to provide full disclosure on all agendas.

Ms. Geanacou asserted that training should not be included in the parameters and guidelines since it was not included in the Commission's statement of decision. However, if the Commission were to include training, she recommended adoption of option four, which limits training to a one-time basis per new member.

Mr. Silva commented that the claimant's new proposal shifts training from teaching someone how to conduct an activity that the person may not have the knowledge or skill to perform to educating a person on the law. He added that training is appropriate for an activity that one is reasonably expected to know how to do. However, he maintained that knowing the law is every citizen's obligation rather than a state mandate. Accordingly, he agreed with Ms. Geanacou and recommended that the Commission adopt option four.

Regarding a person's obligation to know the law, Member Lazar noted that the City of Turlock continually advises its commissions and boards about the Brown Act and the ramifications for violating the requirements. He added that it is a part of life in local government. Chairperson Porini clarified that at the state level and the Legislature, boards and commissions have to abide by the Bagley-Keene Act.

Member Lazar requested staff to respond to the claimant's contention. With respect to the claimant's new proposal on training, Ms. Opie maintained that it was unclear whether the claimant was requesting training on the requirements of the Brown Act Reform or if it included the entire Brown Act. Ms. Stone clarified that option one would provide training for the new bodies on the specific requirements of Brown Act Reform.

Member Harrigan requested clarification from the Department of Finance and State Controller's Office on the significance of one-time training. Clarification was provided.

Regarding training on the preparation and posting of agendas, Ms. Opie commented that the statement of decision specifically lists out the reimbursable activity, which is simply to prepare the agenda item.

Member Steinmeier made a motion that was seconded by Member Lazar, to approve option two, staff's recommendation. The motion carried 4-2, with Chairperson Porini and Member Williams voting "No."

## **STAFF REPORTS**

### **Item 5      Implementation of *School Bus Safety II* Audit Recommendations**

Nancy Patton, Staff Services Manager, presented this item. She noted that on March 28<sup>th</sup>, the Bureau of State Audits released its audit report on School Bus Safety II. The staff report contains an overview of the Bureau's recommendations and the initial steps taken to implement those recommendations.

Ms. Patton stated that the Commission was required to report the efforts made to implement the recommendations to the Bureau in sixty days, six months, and one year. The first report is due on May 27<sup>th</sup>. Prior to that date, Commission staff will draft an implementation plan to be presented to the Commission at the May hearing. Staff will continue to apprise the Commission of actions taken to implement the report recommendations as they occur.

Chairperson Porini then invited staff with the Legislative Analyst's Office to comment on the School Bus Safety II audit. Jennifer Bornstein, representing the Legislative Analyst's Office, explained that their recommendations for School Bus Safety II attempt to operationalize the findings from the Joint Legislative Audit Committee (JLAC) report. She stated that they propose to address the recommendations by first dealing with the prior year's claims through the claims bill, and then suggesting that the Legislature direct the Commission to delete authority for school districts to claim for the implementation aspect of the mandate.

Ms. Bornstein indicated that the JLAC report revealed that about 93% of the costs associated with this mandate were implementation costs. She added that the report cited a Legislative Counsel opinion stating that school districts, to a certain extent, had a preexisting duty for this type of implementation, specifically for monitoring students as they get on and off the bus. Therefore, recommending that the Legislature direct the Commission to narrow the parameters and guidelines would address the fact that implementation is not necessarily a new program or higher level of service. She explained that the Legislature would have to appropriate funding for the mandate in the claims bill in order to modify the parameters and guidelines.

Further, Ms. Bornstein noted the recommended options for addressing the budget year ongoing claims, particularly the suggestion to the Legislature to tie the ongoing funding for the School Bus Safety II mandate to the Home-to-School Transportation Categorical Program. She stated that this would allow school districts to receive a more dependable stream of funding and also save funding. She added that the districts could use the savings as a reserve to meet the cost of complying with the ongoing mandate requirements. She indicated that ongoing costs for this mandate would be approximately ten million dollars, which should be distributed to school districts based on a per average daily attendance or pupil mile distribution methodology, whichever was a more accurate description of true cost.

Ms. Bornstein also noted that the JLAC report revealed that true cost was not reflected in the audited claims. Instead, most of the claimed costs were determined by who the claimants' consultants were because of the approach taken in claiming the costs. She explained that by recommending distribution of the funds in a different manner, the districts would be accurately reimbursed.

Item 6      Executive Director's Report on Workload, Budget, Legislation, Next Agenda

Ms. Higashi noted the following:

- *Workload.* The Commission members were provided with a workload summary.
- *Budget.* The Assembly Budget Sub-Committee heard the Commission's budget this week. There were no issues. However, connected with the budget is a recommendation made by the Legislative Analyst's Office regarding the appropriation on the POBOR mandate and

the JLAC recommendation to audit that claim. The Senate will hear the Commission's budget next week.

- *Legislation.* The local government claims bill has not yet been introduced. Also, the Education Trailer Bill, AB 2995, which is carried by the Committee on Budget, is proceeding.
- *Future Hearing Agendas.* There will be two test claims, a request for reconsideration, and parameters and guidelines on the May agenda. In addition, the incorrect reduction claims for *Certification of Teacher Evaluator's Demonstrated Competence* were removed from the June agenda.

Ms. Opie mentioned that the Commission was holding the rulemaking workshop at 1:30 that afternoon.

## **PUBLIC COMMENT**

Alan Burdick, on behalf of the California State Association of Counties, noted that the mandate reform option on school districts affects the whole mandates process, and not just schools. He requested that the local entities also be allowed to participate in the process and in discussions relative to changing the processes. Chairperson Porini duly noted.

## **CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526.**

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126, subdivision (e)(1):

1. *San Diego Unified School District v. Commission on State Mandates, et al.*, Case Number D038027, in the Appellate Court of the State of California, Fourth Appellate District, Division 1. CSM Case No. 01-L-13 [*Pupil Expulsions*]
2. *San Diego Unified School District and San Juan Unified School District v. Commission on State Mandates, et al.*, Case Number 00CS00810, in the Superior Court of the State of California, County of Sacramento. CSM Case No. 01-L-04 [*Physical Performance Tests*]
3. *State of California, Department of Finance v. Commission on State Mandates, Kern Union High School District; San Diego Unified School District, County of Santa Clara*, Case Number C037645, in the Appellate Court of the State of California, Third Appellate District. CSM Case No. 01-L-11 [*School Site Councils*]
4. *City of San Diego v. Commission on State Mandates, et al.*, Case Number D039095 in the Appellate Court of the State of California, Fourth Appellate District. CSM Case No. 01-L-15 [*Special Use; Eminent Domain*]
5. *County of Los Angeles v. Commission on State Mandates, et al.*, Case Number B156870, in the Appellate Court of the State of California, County of Los Angeles. CSM Case No. 01-L-17 [*Domestic Violence*]

6. *County of San Bernardino v. Commission on State Mandates, et al.*, Case Number BS069611, in the Superior Court of the State of California, County of Los Angeles. CSM Case No. 01-L-08 [*SEMS*]
7. *County of San Bernardino v. Commission on State Mandates of the State of California, et al.*, Case Number BS07309, in the Superior Court of the State of California, County of Los Angeles. CSM Case No. 01-L-10 [*Property Tax Administration*]
8. *County of San Diego v. Commission on State Mandates, et al.*, Case Number D039471, in the Appellate Court of the State of California, County of San Diego, Fourth Appellate District. CSM Case No. 01-L-16 [*San Diego MIA*]

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

- Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd. (e)(2)(B)(i).)

#### PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a) and 17526.

Discussion and action, if appropriate, on report from the Personnel Sub-Committee.

Hearing no further comments, Chairperson Porini adjourned into closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; and Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

#### REPORT FROM CLOSED EXECUTIVE SESSION

Chairperson Porini reported that the Commission met in closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; and Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

#### ADJOURNMENT

Hearing no further business, Chairperson Porini adjourned the meeting at 12:50 p.m.



PAULA HIGASHI  
Executive Director

**COMMISSION ON STATE MANDATES**

980 NINTH STREET, SUITE 300  
SACRAMENTO, CA 95814  
PHONE: (916) 323-3562  
FAX: (916) 445-0278  
E-mail: csminfo@csm.ca.gov



April 29, 2002

Ms. Pamela A. Stone  
Maximus  
4320 Auburn Boulevard, Suite 200  
Sacramento, CA 95841

Mr. Glenn Haas, Bureau Chief  
State Controller's Office  
Division of Accounting & Reporting  
3301 C Street, Suite 500  
Sacramento, CA 95816

*And Affected State Agencies and Interested Parties (See Attached Mailing List)*

RE: **Adopted Parameters and Guidelines**  
*Open Meetings Act/Brown Act Reform, CSM 4469*  
City of Newport Beach, Claimant  
Government Code Sections 54952, 54954.2, 54954.3, 54957.1, and 54957.7  
Statutes of 1986, Chapter 641  
Statutes of 1993, Chapters 1136, 1137 and 1138

Dear Ms. Stone and Mr. Haas:

On April 25, 2002, the Commission on State Mandates adopted the Parameters and Guidelines for this test claim.

A copy of the final Parameters and Guidelines is enclosed. If you have any questions, please contact Ms. Cathy Cruz at (916) 323-8218.

Sincerely,

A handwritten signature in cursive script that reads 'Paula Higashi'.

PAULA HIGASHI  
Executive Director

Enclosure

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DATE: 4/30/02 INITIAL: VS  
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BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Government Code Sections 54952, 54954.2, 54954.3, 54957.1, and 54957.7;

Statutes of 1986, Chapter 641; and  
Statutes of 1993, Chapters 1136, 1137 and 1138;

Filed on December 29, 1994 and amended on August 7, 2000;

By the City of Newport Beach, Claimant.

No. CSM 4469

*Open Meetings Act/Brown Act Reform*

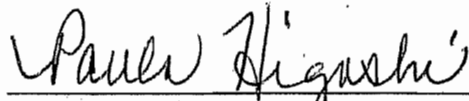
ADOPTION OF PARAMETERS AND  
GUIDELINES PURSUANT TO  
GOVERNMENT CODE SECTION 17557  
AND TITLE 2, CALIFORNIA CODE OF  
REGULATIONS, SECTION 1183.12

*(Adopted on April 25, 2002)*

**ADOPTED PARAMETERS AND GUIDELINES**

The attached Parameters and Guidelines is hereby adopted in the above-entitled matter.

This Decision shall become effective on April 29, 2002.

  
\_\_\_\_\_  
PAULA HIGASHI, Executive Director

## Parameters and Guidelines

Government Code Sections 54952, 54954.2, 54954.3, 54957.1, and 54957.7

Statutes of 1986, Chapter 641

Statutes of 1993, Chapters 1136, 1137 and 1138

### *Open Meetings Act/Brown Act Reform*

#### I. SUMMARY OF THE MANDATE

Government Code sections 54952, 54954.2, 54957.1 and 54957.7, require that “legislative bodies” of local agencies comply with certain changes to the Ralph M. Brown Act, also known as the Open Meetings Act.

On June 28, 2001, the Commission on State Mandates (Commission) adopted its Statement of Decision on the *Brown Act Reform* test claim (CSM-4469). The Commission found that Government Code sections 54952, 54954.2, 54957.1, and 54957.7, as added and amended by Statutes of 1993, chapters 1136, 1137, and 1138, constitutes a reimbursable state mandated program upon local governments within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The test claim legislation expanded the types of “legislative bodies” required to comply with the notice and agenda requirements of Government Code sections 54954.2 and 54954.3, to include:

- Local Bodies created by state or federal statute.
- Standing Committees with less than a quorum of members of the legislative body that has a continuing subject matter jurisdiction or a meeting schedule fixed by formal action.
- Permanent & Temporary Advisory Bodies (except bodies of less than a quorum of the members of the legislative body).

It also required all “legislative bodies” to perform a number of additional activities in relation to the closed session requirements of the Brown Act, as follows:

- To include a brief general description on the agenda of all items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. (Gov. Code, § 54954.2, subd. (a).)
- To disclose in an open meeting, prior to holding any closed session, each item to be discussed in the closed session. (Gov. Code, § 54957.7, subd. (a).)
- To reconvene in open session prior to adjournment and report the actions and votes taken in closed session for the five items identified in Government Code section 54957.1, subdivision (a)(1-4, 6). (Gov. Code, § 54957.7, subd. (b).)
- To provide copies of closed session documents as required. (Gov. Code, § 54957.1, subd. (b) and (c).)

The Commission previously adopted two test claims on the Brown Act:

### 1. Open Meetings Act

On March 23, 1988, the Commission adopted the *Open Meetings Act* test claim (CSM-4257). Statutes of 1986, chapter 641, added Government Code section 54954.2 to require that the legislative body of the local agency, or its designee, post an agenda containing a brief general description of each item of business to be transacted or discussed at the regular meeting, subject to exceptions stated therein, specifying the time and location of the regular meeting and requiring that the agenda be posted at least 72 hours before the meeting in a location freely accessible to the public. The following types of "legislative bodies" were eligible for reimbursement:

- Governing board, commission, directors or body of a local agency or any board or commission thereof, as well as any board, commission, committee, or other body on which officers of a local agency serve in their official capacity.
- Any board, commission, committee, or body which exercises authority delegated to it by the legislative body.
- Planning commissions, library boards, recreation commissions, and other permanent boards or commissions of a local agency composed of at least a quorum of the members of the legislative body.

Statutes of 1986, chapter 641 also added Government Code section 54954.3 to provide an opportunity for members of the public to address the legislative body on specific agenda items or any item of interest that is within the subject matter jurisdiction of the legislative body, and this opportunity for comment must be stated on the posted agenda.

### 2. School Site Councils and Brown Act Reform

On April 27, 2000, the Commission approved the *School Site Councils and Brown Act Reform* test claim (CSM-4501). This test claim was based on Government Code section 54954 and Education Code section 35147, which addressed the application of the open meeting act provisions of the Brown Act to specified school site councils and advisory committees of school districts.<sup>1</sup>

## II. ELIGIBLE CLAIMANTS

Any county, city, a city and county, school or special district that incurs increased costs as a result of this reimbursable state mandated program is eligible to claim reimbursement of those costs.

## III. PERIOD OF REIMBURSEMENT

Government Code section 17557, prior to its amendment by Statutes of 1998, chapter 681 (effective September 22, 1998), stated that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The test claim for *Brown Act Reform* was filed on December 29, 1994. Statutes

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<sup>1</sup> The parameters and guidelines for the *School Site Councils and Brown Act Reform* test claim are not included in these parameters and guidelines.

of 1993, chapters 1136, 1137, and 1138, became effective January 1, 1994. Therefore, costs incurred on or after January 1, 1994 for compliance with the *Brown Act Reform* mandate are eligible for reimbursement.

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561, subdivision (d)(1), all claims for reimbursement of initial years' costs shall be submitted within 120 days of notification by the State Controller of the issuance of claiming instructions.

If total costs for a given fiscal year do not exceed \$200, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564.

Initial years' costs shall not include any costs that were claimable or reimbursed pursuant to *Open Meetings Act* Parameters and Guidelines as amended on December 4, 1991 or November 30, 2000. Reimbursement for these costs must be claimed as prescribed in the Controller's Claiming Instructions No. 2000-15 and 2000-16 for local agencies and schools, respectively.

Annual claims, commencing with the 2001-2002 fiscal year, shall include all costs for *Open Meetings Act* and *Brown Act Reform*.

#### IV. REIMBURSABLE ACTIVITIES

For each eligible claimant, the following activities are eligible for reimbursement:

##### A. Agenda Preparation and Posting Activities

1. Prepare a single agenda for a regular meeting of a legislative body of a local agency or school district containing a brief description of each item of business to be transacted or discussed at a regular meeting, including items to be discussed in closed session, and citing the time and location of the regular meeting.<sup>2</sup> (Gov. Code, § 54954.2, subd. (a).)
2. Post a single agenda 72 hours before a meeting in a location freely accessible to the public. Further, every agenda must state that there is an opportunity for members of the public to comment on matters that are within the subject matter jurisdiction of the legislative body, subject to exceptions stated therein. (Gov. Code, §§ 54954.2, subd. (a), and 54954.3, subd. (a).)

Beginning January 1, 1994, the following types of "legislative bodies" are eligible to claim reimbursement under these parameters and guidelines for the activities listed in section IV.A:

- Local Bodies created by state or federal statute.
- Standing Committees with less than a quorum of members of the legislative body that has a continuing subject matter jurisdiction or a meeting schedule fixed by formal action.

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<sup>2</sup> As amended by Statutes of 1993, chapter 1136.

- Permanent & Temporary Advisory Bodies (except bodies of less than a quorum of the members of the legislative body).

Beginning January 1, 1994, the following "legislative bodies" are eligible to claim reimbursement under these parameters and guidelines for the preparation of a brief general description of closed session agenda items, using either the actual or standard time reimbursement options pursuant to section V.A.1 or 2:

- Governing board, commission, directors or body of a local agency or any board or commission thereof, as well as any board, commission, committee, or other body on which officers of a local agency serve in their official capacity.
- Any board, commission, committee, or body which exercises authority delegated to it by the legislative body.
- Planning commissions, library boards, recreation commissions, and other *permanent* boards or commissions of a local agency composed of at least a quorum of the members of the legislative body.
- Local Bodies created by state or federal statute.
- Standing Committees with less than a quorum of members of the legislative body that has a continuing subject matter jurisdiction or a meeting schedule fixed by formal action.
- Permanent & Temporary Advisory Bodies (except bodies of less than a quorum of the members of the legislative body).

#### B. Closed Session Activities

1. Disclose in an open meeting, prior to holding any closed session, each item to be discussed in the closed session. (Gov. Code, § 54957.7, subd. (a).)
2. Reconvene in open session prior to adjournment to make any disclosures required by Section 54957.1 of action taken in the closed session, including items as follows: (Gov. Code, § 54957.7, subd. (b).)
  - a. Approval of an agreement concluding real estate negotiations as specified in Section 54956.8. (Gov. Code, § 54957.1, subd. (a)(1).)
  - b. Approval given to its legal counsel to defend, or seek or refrain from seeking appellate review or relief, or to enter as an amicus curiae in any form of litigation as the result of consultation under Section 54956.9. (Gov. Code, § 54957.1, subd. (a)(2).)
  - c. Approval given to its legal counsel of a settlement of pending litigation as defined in Section 54956.9, at any stage prior to or during a judicial or quasi-judicial proceeding shall be reported after the settlement is final. (Gov. Code, § 54957.1, subd. (a)(3).)
  - d. Disposition reached as to claims discussed in closed session pursuant to Section 54956.95 shall be reported as soon as reached in a manner that identifies of the

name of the claimant, the name of the local agency claimed against, the substance of the claim, and any monetary amount approved for payment and agreed upon by the claimant. (Gov. Code, § 54957.1, subd. (a)(4).)

- e. Approval of an agreement concluding labor negotiations with represented employees pursuant to Section 54957.6 shall be reported after the agreement is final and has been accepted or ratified by the other party. (Gov. Code, § 54957.1, subd. (a)(6).)
3. Provide copies of any contracts, settlement agreements, or other documents that were finally approved or adopted in the closed session to a person who submitted a written request within the timelines specified or to a person who has made a standing request, as set forth in Sections 54954.1 or 54956 within the time lines specified. (Gov. Code, § 54957.1, subd. (b) and (c).)
4. Train members of only those legislative bodies that actually hold closed executive sessions, on the closed session requirements of *Brown Act Reform*. If such training is given to all members of the legislative body, whether newly appointed or existing members, contemporaneously, time of the trainer and legislative members is reimbursable. Additionally, time for preparation of training materials, obtaining materials including training videos and audio visual aids, and training the trainers to conduct the training is reimbursable. See Section V.B.6 of these parameters and guidelines.

Beginning January 1, 1994, the following "legislative bodies" are eligible to claim reimbursement under these parameters and guidelines for the activities listed in IV.B:

- Governing board, commission, directors or body of a local agency or any board or commission thereof, as well as any board, commission, committee, or other body on which officers of a local agency serve in their official capacity.
- Any board, commission, committee, or body which exercises authority delegated to it by the legislative body.
- Planning commissions, library boards, recreation commissions, and other *permanent* boards or commissions of a local agency composed of at least a quorum of the members of the legislative body.
- Local Bodies created by state or federal statute.
- Standing Committees with less than a quorum of members of the legislative body that has a continuing subject matter jurisdiction or a meeting schedule fixed by formal action.
- Permanent & Temporary Advisory Bodies (except bodies of less than a quorum of the members of the legislative body).

## V. CLAIM PREPARATION AND SUBMISSION

Each reimbursement claim must be timely filed. Each of the following cost elements must be identified for each reimbursable activity identified in section IV of this document.

### A. Reimbursement Options for Agenda Preparation and Posting, Including Closed Session Agenda Items

Eligible claimants may use the actual time, standard time, or flat rate reimbursement options for claiming costs incurred pursuant to section IV.A of these parameters and guidelines for agenda preparation and posting, including closed session items.<sup>3</sup> Eligible claimants must claim actual costs incurred for subsequent reporting of action taken in closed session, providing copies of documents approved or adopted in closed session, and training.

For each type or name of meeting claimed during a fiscal year, select one of the following reimbursement options. For example, all city council meetings in a given fiscal year may be claimed on only one basis: actual time, standard time or flat-rate. If standard time is selected, all city council meetings must be claimed using this basis for the entire year. However, all city council meetings could be claimed on an actual cost basis during a subsequent fiscal year.

#### 1. Actual Time

List the meeting names and dates. Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

Counties and cities may claim indirect costs pursuant to section V.C.

#### 2. Standard Time

##### a. Main Legislative Body Meetings of Counties and Cities

List the meeting names and dates. For each meeting, multiply the number of agenda items, excluding standard agenda items such as "adjournment", "call to order", "flag salute", and "public comments", by 30 minutes and then by the blended productive hourly rate of the involved employees.

Counties and cities may claim indirect costs pursuant to section V.C.

##### b. Special District Meetings, and County and City Meetings Other Than Main Legislative Body

List the meeting names and dates. For each meeting, multiply the number of agenda items, excluding standard agenda items such as "adjournment", "call to order", "flag salute", and "public comments", by 20 minutes and then by the blended productive hourly rate of the involved employees.

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<sup>3</sup> The flat rate includes all of the costs for preparing and posting an agenda, including closed session agenda items. Claimants that filed reimbursement claims under the *Open Meetings Act* Program using the flat rate reimbursement option cannot file another reimbursement claim using the flat rate option for initial years costs for agenda preparation of closed session items under Brown Act Reform. Refer to sections III and IV of these parameters and guidelines.

Special districts, counties and cities may claim indirect costs pursuant to section V.C.

c. School and Community College Districts and County Offices of Education

List the meeting names and dates. For each meeting, multiply the number of agenda items times the minutes per agenda item for County Offices of Education and for districts, by enrollment size, times the blended productive hourly rate of the involved employees. The minutes per agenda for County Offices of Education and for districts by enrollment size are:

County Offices of Education:	45 minutes
Districts:	
Enrollment 20,000 or more	45 minutes
Enrollment 10,000 – 19,999	15 minutes
Enrollment less than 10,000	10 minutes

School and community college districts and County Offices of Education may claim indirect costs pursuant to section V.C.

3. Flat Rate<sup>4</sup>

List the meeting names and dates. Multiply the uniform cost allowance, shown in the table provided below, by the number of meetings. The uniform cost allowance shall be adjusted each year subsequent to fiscal year 1997-1998 by the Implicit Price Deflator referenced in Government Code section 17523.

1993-1994	\$ 90.10
1994-1995	92.44
1995-1996	95.12
1996-1997	97.31
1997-1998	100.00

B. Direct Cost Reporting

Direct costs that are eligible for reimbursement are:

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

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<sup>4</sup> The flat rate includes all of the costs for preparing and posting an agenda, including closed session agenda items. Claimants that filed reimbursement claims under the *Open Meetings Act* Program using the flat rate reimbursement option cannot file another reimbursement claim using the flat rate option for initial years costs for agenda preparation of closed session items under Brown Act Reform. Refer to sections III and IV of these parameters and guidelines.

## 2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

## 3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

## 4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

## 5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element B.1, Salaries and Benefits, for each applicable reimbursable activity.

## 6. Training

Report the cost of training members of the legislative body to perform the reimbursable activities, as specified in section IV.B of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element B.1, Salaries and Benefits, and B.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element B.3, Contracted Services. This data, if too voluminous to be included with the claim, may be reported in a summary. However, supporting data must be maintained as described in section VI.

### C. Indirect Cost Rates

Indirect costs are defined as costs which are incurred for a common or joint purpose, benefiting more than one program and are not directly assignable to a particular department of program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of central government services distributed to other departments based on a systematic and rational basis through a cost allocation plan.

#### Cities, Counties and Special Districts

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.); (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the Claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or
2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

#### School Districts

School districts must use the J-380 (or subsequent replacement) nonrestrictive indirect cost rate provisionally approved by the California Department of Education.

## County Offices of Education

County offices of education must use the J-580 (or subsequent replacement) nonrestrictive indirect cost rate provisionally approved by the California Department of Education.

## Community Colleges

Community colleges have the option of using (1) a federally approved rate, using the cost accounting principles from the OMB Circular A-21 "Cost Principles of Educational Institutions", (2) the rate calculated on State Controller's Form FAM-29C; or (3) a 7% indirect cost rate.

## **VI. SUPPORTING DATA**

### **A. Source Documents**

For auditing purposes, all incurred costs claimed must be traceable to source documents that show evidence of their validity and relationship to the reimbursable activities. Documents may include, but are not limited to, worksheets, employee time records or time logs, cost allocation reports (system generated), invoices, receipts, purchase orders, contracts, agendas, training packets with signatures and logs of attendees, calendars, declarations, and data relevant to the reimbursable activities otherwise reported in compliance with local, state, and federal government requirements.

For those entities that elect reimbursement pursuant to the standard time methodology, option 2 in section V.A, documents showing the calculation of the blended productive hourly rate and copies of agendas shall be sufficient evidence. For those entities that elect reimbursement pursuant to the flat-rate methodology, option 3 in section V.A, copies of agendas shall be sufficient evidence.

The blended productive hourly rate, used in claiming standard or unit time reimbursements, may be calculated by determining the percentage of time spent by persons or classifications of persons on the reimbursable activities and multiplying the productive hourly rate (including salaries, benefits and indirect costs, if not claimed elsewhere) for each person or classification of persons times the percentage of time spent by that person or classification of persons. Claimants may determine a percentage allocation for the person or classification of persons in a base fiscal year and use that percentage allocation for subsequent future years by multiplying the base year percentages times the productive hourly rate for that person or classification of persons for the fiscal year of the reimbursement claim.

For example, a city manager may determine that the percentage of time spent on the reimbursable activities by various classifications in a base year of fiscal year 1998-1999 was as follows:

City Manager	17%
City Attorney	15%
City Clerk	36%
Department Managers	9%
Secretaries	23%
Total	100%

The city determines that the productive hourly rate (salaries, benefits, and indirect costs) for fiscal year 2000-2001 for each classification is as follows:

	Salary	Benefits	Indirect Cost Rate	Indirect Costs	Productive Hourly Rate
City Manager	\$60	\$12	29 %	\$13	\$85
City Attorney	\$55	\$10	30 %	\$15	\$80
City Clerk	\$40	\$ 8	31 %	\$12	\$60
Department Manager	\$45	\$ 9	30 %	\$11	\$65
Secretaries	\$18	\$ 5	25 %	\$ 7	\$30

The blended productive hourly rate for fiscal year 2000-2001 is determined by multiplying the percentages in the base year times the productive hourly rate in the fiscal year claimed, and adding the totals, as follows:

City Manager	17 %	\$85	\$14.25
City Attorney	15 %	\$80	\$12.00
City Clerk	36 %	\$60	\$21.60
Department Manager	9 %	\$65	\$ 5.85
Secretaries	23 %	\$30	\$ 6.90
Total	100 %		\$60.80

The city's claim would be determined by multiplying the blended productive hourly rate times the minutes per agenda item times the number of agenda items.

#### **B. Record Keeping**

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to audit by the State Controller no later than two years after the end of the calendar year in which the reimbursement claim is filed or last amended. See the State Controller's claiming instructions regarding retention of required documentation during the audit period.

### **VII. OFFSETTING SAVINGS AND REIMBURSEMENTS**

Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain a mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any other source, including but not limited to, service fees collected, federal funds and other state funds, shall be identified and deducted from this claim.

### **VIII. STATE CONTROLLER'S OFFICE REQUIRED CERTIFICATION**

An authorized representative of the claimant shall be required to provide a certification of the claim, as specified in the State Controller's claiming instructions, for those costs mandated by the State contained herein.

### **IX. PARAMETERS AND GUIDELINES AMENDMENTS**

Parameters and guidelines may be amended pursuant to Title 2, California Code of Regulations section 1183.2.

**DECLARATION OF SERVICE BY MAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 350, Sacramento, California 95814.

April 30, 2002, I served the:

**Adopted Parameters and Guidelines**

*Open Meetings Act/Brown Act Reform*, CSM 4469

City of Newport Beach, Claimant

Government Code Sections 54952, 54954.2, 54954.3, 54957.1, and 54957.7

Statutes of 1986, Chapter 641

Statutes of 1993, Chapters 1136, 1137 and 1138

by placing a true copy thereof in an envelope addressed to:

Ms. Pamela A. Stone  
Maximus  
4320 Auburn Boulevard, Suite 200  
Sacramento, CA 95841

Mr. Glenn Haas, Bureau Chief  
State Controller's Office  
Division of Accounting & Reporting  
3301 C Street, Suite 500  
Sacramento, CA 95816

*State Agencies and Interested Parties (See attached mailing list);*

and by sealing and depositing said envelope in the United States mail at Sacramento, California, with postage thereon fully paid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on April 30, 2002, at Sacramento, California.

  
VICTORIA SORIANO

# Commission on State Mandates

List Date: 04/29/2001

Mailing Information Adopted Parameters & Guidelines

## Mailing List

Claim Number CSM-4469 Claimant City of Newport Beach

54952, 54954.2, 54954.3, 54957.1, and 54957.7

Subject Ch. 641/86, 1136/93, 1137/93, 1138/93, 32/94

Issue Open Meetings Act/Brown Act Reform

Mr. Stephen Ando, Finance Director  
City of Scotts Valley

One Civic Center Drive  
Scotts Valley CA 95066

Tel: (831) 438-2324  
FAX: (831) 438-2793

Interested Person

Dr. Carol Berg,  
Education Mandated Cost Network

1121 L Street Suite 1060  
Sacramento CA 95814

Tel: (916) 446-7517  
FAX: (916) 446-2011

Interested Person

Ms. Carol Bingham, (E-08)  
Department of Education

560 J Street, Suite 150  
Sacramento CA 95814

Tel: (916) 324-4728  
FAX: (916) 322-5102

State Agency

Mr. Bruce Brugmann,  
San Francisco Bay Guardian

520 Hampshire  
San Francisco CA 94110

Tel: (415) 255-7600  
FAX: (415) 621-2016

Interested Person

Mr. Ted Buckley, Legal Advisor  
Long Beach Unified School District  
Legal Services Office

1515 Hughes Way Room 437  
Long Beach CA 90810-1839

Tel: (562) 997-8251  
FAX: (562) 997-8092

Interested Person

54952, 54954.2, 54954.3, 54957.1, and 54957.7

## Subject

Ch. 641/86, 1136/93, 1137/93, 1138/93, 32/94

## Issue

Open Meetings Act/Brown Act Reform

Ms. Annette Chinn,  
Cost Recovery Systems

705-2 East Bidwell Street #294  
Folsom CA 95630

Tel: (916) 939-7901  
FAX: (916) 939-7801

Interested Person

Mr. William A. Doyle, Mandated Cost Administrator  
San Jose Unified School District

1153 El Prado Drive  
San Jose CA 95120

Tel: (408) 997-2500  
FAX: (408) 997-3171

Interested Person

Mr. James Erickson, City Administrator  
City of Millbrae

621 Magnolia Ave.  
Millbrae CA 94030

Tel: (650) 259-2338  
FAX: (650) 259-2415

Interested Person

Ms. Pam Erlandson, Revenue Office  
City of Monterey

City Hall  
Monterey CA 93940

Tel: (831) 646-3760  
FAX: (831) 646-3793

Interested Person

Mr. Glen Everroad, Revenue Manager  
City of Newport Beach

3300 Newport Blvd. P. O. Box 1768  
Newport Beach CA 92659-1768

Tel: (949) 644-3127  
FAX: (949) 644-3339

Claimant

Mr. Terry Francke,  
First Amendment Coalition

2701 Cottage Way, Suite 12  
Sacramento CA 95825

Tel: (916) 000-0000  
FAX: (916) 000-0000

Interested Person

Claim Number

CSM-4469

Claimant

City of Newport Beach

54952, 54954.2, 54954.3, 54957.1, and 54957.7

Subject

Ch. 641/86, 1136/93, 1137/93, 1138/93, 32/94

Issue

Open Meetings Act/Brown Act Reform

Ms. Susan Geanacou, Senior Staff Attorney (A-15)  
Department of Finance

915 L Street, Suite 1190  
Sacramento CA 95814

Tel: (916) 445-3274  
FAX: (916) 327-0220

State Agency

Ms. Phoebe Graubard,  
Attorney at Law

P.O. Box 2048  
Fort Bragg CA 95437

Tel: (707) 964-3525  
FAX: (707) 964-3525

Interested Person

Mr. Glenn Haas, Bureau Chief (B-8)  
State Controller's Office

Division of Accounting & Reporting  
3301 C Street Suite 500  
Sacramento CA 95816

Tel: (916) 445-8757  
FAX: (916) 323-4807

State Agency

Ms. Patricia Healy,  
City of Los Angeles  
Office of the City Clerk  
1400 K Street, Rm. 308  
Sacramento CA 95814

Tel: (213) 485-2121  
FAX: (213) 000-0000

Interested Person

Mr. Leonard Kaye, Esq.,  
County of Los Angeles  
Auditor-Controller's Office  
500 W. Temple Street, Room 603  
Los Angeles CA 90012

Tel: (213) 974-8864  
FAX: (213) 617-8106

Interested Person

Mr. James Lindholm Jr., Principal Analyst  
County of San Luis Obispo

County Government Center Room 386  
San Luis Obispo CA 93408

Tel: (916) 000-0000  
FAX: (916) 000-0000

Interested Person

54952, 54954.2, 54954.3, 54957.1, and 54957.7

## Subject

Ch. 641/86, 1136/93, 1137/93, 1138/93, 32/94

## Issue

Open Meetings Act/Brown Act Reform

Mr. Tom Lutzenberger, Principal Analyst (A-15)  
Department of Finance

915 L Street, 6th Floor  
Sacramento CA 95814

Tel: (916) 445-8913  
FAX: (916) 327-0225

State Agency

Mr. Frank Martinez,  
Office of the City Clerk  
City of Los Angeles  
City Hall, Room 360  
Los Angeles CA 90012

Tel: (213) 485-4466  
FAX: (213) 473-5212

Interested Person

Mr. Paul Minney,  
Spector, Middleton, Young & Minney, LLP

7 Park Center Drive  
Sacramento CA 95825

Tel: (916) 646-1400  
FAX: (916) 646-1300

Interested Person

Mr. Tom Newton,  
California Newspaper Publisher's Association

1225 8th Street Suite 260  
Sacramento CA 95814

Tel: (916) 288-6000  
FAX: (916) 288-6002

Interested Person

Mr. Andy Nichols, Senior Manager  
Centration, Inc.

12150 Tributary Point Drive Suite 140  
Gold River CA 95670

Tel: (916) 351-1050  
FAX: (916) 351-1020

Interested Person

Mr. Arthur Palkowitz, Legislative Mandates Specialist  
San Diego Unified School District

4100 Normal Street Room 2148  
San Diego CA 92103

Tel: (619) 725-7565  
FAX: (619) 725-7569

Interested Person

Claim Number

CSM-4469

Claimant

City of Newport Beach

54952, 54954.2, 54954.3, 54957.1, and 54957.7

Subject

Ch. 641/86, 1136/93, 1137/93, 1138/93, 32/94

Issue

Open Meetings Act/Brown Act Reform

Mr. Keith B. Petersen, President  
Sixten & Associates

5252 Balboa Avenue Suite 807  
San Diego CA 92117

Tel: (858) 514-8605

FAX: (858) 514-8645

Interested Person

Ms. Barbara Redding,  
County of San Bernadino  
Recorder's Office  
222 West Hospitality Lane  
San Bernardino CA 92415-0018

Tel: (909) 386-8850

FAX: (909) 386-8830

Interested Person

Mr. Gerry Shelton, Administrator (E-8)  
Department of Education  
School Fiscal Services  
560 J Street Suite 150  
Sacramento CA 95814

Tel: (916) 323-2068

FAX: (916) 322-5102

State Agency

Mr. Steve Shields,  
Shields Consulting Group, Inc.

1536 36th Street  
Sacramento CA 95816

Tel: (916) 454-7310

FAX: (916) 454-7312

Interested Person

Mr. Mark Sigman, SB 90 Coordinator  
County of Riverside  
Auditor-Controller  
P O Box 1326  
Riverside CA 92502-1326

Tel: (909) 955-6283

FAX: (909) 955-2428

Interested Person

Mr. Steve Smith, CEO  
Mandated Cost Systems, Inc.

11130 Sun Center Drive Suite 100  
Rancho Cordova CA 95670

Tel: (916) 669-0888

FAX: (916) 669-0889

Interested Person

54952, 54954.2, 54954.3, 54957.1, and 54957.7

## Subject

Ch. 641/86, 1136/93, 1137/93, 1138/93, 32/94

## Issue

Open Meetings Act/Brown Act Reform

Ms. Catherine Smith,  
California Special District Association

1215 K Street, Suite 930  
Sacramento CA 95814

Tel: (916) 442-7887  
FAX: (916) 442-7889

Interested Person

Mr. Jim Spano, (B-8)  
State Controller's Office  
Division of Audits (B-8)  
300 Capitol Mall, Suite 518  
Sacramento CA 95814

Tel: (916) 323-5849  
FAX: (916) 327-0832

State Agency

Mr. Philip Squire,  
Philip Squire Associates

8804 Samoline Street  
Downey CA 90240

Tel: (916) 000-0000  
FAX: (916) 000-0000

Interested Person

Mr. Dwight R. Stenbakken,  
League of California Cities

1400 K Street, #400  
Sacramento CA 95814

Tel: (916) 000-0000  
FAX: (916) 000-0000

Interested Person

Ms. Pam Stone, Legal Counsel  
MAXIMUS

4320 Auburn Blvd. Suite 2000  
Sacramento CA 95841

Tel: (916) 485-8102  
FAX: (916) 485-0111

Claimant

Mr. Ram Venkatesan, SB 90 Coordinator  
County of Santa Clara  
Controller - Treasurer Department  
70 West Hedding Street East Wing 2nd Floor  
San Jose CA 95110

Tel: (408) 299-2541  
FAX: (408) 289-8629

Interested Person

**Claim Number**

CSM-4469

**Claimant**

City of Newport Beach

54952, 54954.2, 54954.3, 54957.1, and 54957.7

**Subject**

Ch. 641/86, 1136/93, 1137/93, 1138/93, 32/94

**Issue**

Open Meetings Act/Brown Act Reform

Ms. Vicki Wajdak, Chief Accountant, Audits Division  
County of Fresno, Auditor-Controller/Treasurer/Tax Clctr.

P.O. Box 1247  
Fresno CA 93715-1247

*Tel:* (916) 000-0000

*FAX:* (916) 000-0000

Interested Person

Ms. Margaret Wanasamba, SB-90 Coordinator

County of Sacramento

SB90/Grant Coordinator

700 H Street, Rm. 4560

Sacramento CA 95814-1276

*Tel:* (916) 874-6453

*FAX:* (916) 874-5885

Interested Person

Mr. David Wellhouse,  
David Wellhouse & Associates, Inc.

9175 Kiefer Blvd Suite 121  
Sacramento CA 95826

*Tel:* (916) 368-9244

*FAX:* (916) 368-5723

Interested Person

COMMISSION ON STATE MANDATES

NOTICE AND AGENDA <sup>1</sup>

State Capitol, Room 126  
Sacramento, California

December 19, 2002

9:30 A.M. - PUBLIC SESSION

I. CALL TO ORDER AND ROLL CALL

II. APPROVAL OF MINUTES

Item 1 November 21, 2002

III. PROPOSED CONSENT CALENDAR (action)

*Note: If there are no objections to any of the following action items designated by an asterisk (\*), the Executive Director will include it on the Proposed Consent Calendar that will be presented at the hearing. The Commission will determine which items will remain on the Consent Calendar.*

IV. HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (action)

A. PROPOSED STATEMENT OF DECISION – TEST CLAIM

Item 2\* *Eastview Optional Attendance Area, 99-TC-01*  
Palos Verdes Peninsula Unified School District, Claimant  
Statutes 1998, Chapter 868 (SB 1681) and  
Test Claim Amendment 01-TC-06  
Education Code Section 48200  
As Amended by Statutes 1987, Chapter 1452 (SB 998)

V. INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

A. STATEWIDE COST ESTIMATES

Item 3 *Brown Act Reform, CSM 4469*  
City of Newport Beach, Claimant  
Statutes 1993, Chapter 1136 (AB 1426)  
Statutes 1993, Chapter 1137 (SB 36)  
Statutes 1993, Chapter 1138 (SB 1140)  
Statutes 1994, Chapter 32 (SB 752) and  
Consolidation with *Open Meetings Act, CSM 4257*  
Statutes 1986, Chapter 641 (AB 2674)

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<sup>1</sup> This public meeting notice is available on the Internet at <http://www.csm.ca.gov>.

- Item 4      *Animal Adoption*, 98-TC-11  
County of Los Angeles, City of Lindsay, County of Tulare, County of Fresno  
and Southeast Area Animal Control Authority, Claimants  
Civil Code Sections 1834, 1846; Food and Agriculture Code Sections 31108,  
31752, 31752.5, 31753, 32001, and 32003;  
Statutes 1998, Chapter 752 (SB 1785)

B. ADOPTION OF REGULATIONS PURSUANT TO GOVERNMENT CODE  
SECTION 17527, SUBDIVISION (g).

- Item 5      Adoption of Proposed Amendments to California Code of Regulations,  
Title 2, Chapter 2.5, Article 1. General, Article 3. Test Claims,  
Article 5. Other Claims, and Article 6. Cost Savings Claims, As  
Modified on December 6, 2002 After Close of Public Comment and  
15-day Re-notice Periods

VI. EXECUTIVE DIRECTOR'S REPORT (info)

- Item 6      Workload, Legislation, Next Agenda

VII. PUBLIC COMMENT

VIII. CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS  
11126 and 17526. (Closed Executive Session may begin at this time or may begin earlier  
on this day and reconvene at the end of the meeting.)

A. PENDING LITIGATION

To confer with and receive advice from legal counsel, for consideration and action, as  
necessary and appropriate, upon the following matters pursuant to Government Code  
section 11126, subdivision (e)(1):

1. *San Diego Unified School District and San Juan Unified School District v.  
Commission on State Mandates, et al.*, Case Number 00CS00810, in the Superior  
Court of the State of California, County of Sacramento. CSM Case No. 01-L-04  
[*Physical Performance Tests*]
2. *County of San Bernardino v. Commission on State Mandates of the State of California,  
et al.*, Case Number BS07309, in the Superior Court of the State of California, County  
of Los Angeles. CSM Case No. 01-L-10 [*Property Tax Administration*]
3. *City of San Diego v. Commission on State Mandates, et al.*, Case Number  
D039095 in the Appellate Court of the State of California, Fourth Appellate District,  
Division 1. CSM Case No. 01-L-15 [*Special Use; Eminent Domain*]
4. *County of San Diego v. Commission on State Mandates, et al.*, Case Number D039471,  
in the Appellate Court of the State of California, Fourth Appellate District, Division 1.  
CSM Case No. 01-L-16 [*San Diego MIA*]
5. *County of Los Angeles v. Commission on State Mandates, et al.*, Case Number  
B156870, in the Appellate Court of the State of California, Second Appellate District,  
CSM Case No. 01-L-17 [*Domestic Violence*]

6. *County of San Bernardino v. Commission on State Mandates, et al.*, Case Number B158835, in the Appellate Court of the State of California, Second Appellate District, CSM Case No. 01-L-18 [SEMS]
7. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Case Number 02CS00994, in the Superior Court of the State of California, County of Sacramento. CSM Case No. 02-L-01 [School Bus Safety II].
8. *San Diego Unified School District v. Commission on State Mandates, et al.*, Case Number S109125, in the Supreme Court of the State of California. CSM Case No. 02-L-02 [Pupil Expulsions]
9. *State of California, Department of Finance v. Commission on State Mandates, Kern Union High School District; San Diego Unified School District, County of Santa Clara*, Case Number S109219, in the Supreme Court of the State of California. CSM Case No. 02-L-03 [School Site Councils]

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

- Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd. (e)(2)(B)(i).)

#### B. PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a) and 17526.

Discussion and action, if appropriate, on report from the Personnel Sub-Committee.

### IX. REPORT FROM CLOSED EXECUTIVE SESSION

#### ADJOURNMENT

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For information, contact:

Paula Higashi, Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
(916) 323-3562  
(916) 445-0278 Fax



### Item 3

## Proposed Statewide Cost Estimate

Government Code Sections 54952, 54954.2, 54954.3, 54957.1, and 54957.7

Statutes 1986, Chapter 641

Statutes 1993, Chapters 1136, 1137 and 1138

### *Brown Act Reform*

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#### Executive Summary

The test claim legislation expanded the types of "legislative bodies" required to comply with the notice and agenda requirements of the Ralph M. Brown Act (also known as the Open Meetings Act), and required all "legislative bodies" of local agencies and school districts to perform a number of additional activities in relation to the closed session requirements of the Brown Act.

The City of Newport Beach filed the test claim on December 29, 1994. The Commission adopted the Statement of Decision on June 28, 2001, and the Parameters and Guidelines on April 25, 2002. The Commission previously adopted Parameters and Guidelines for two test claims entitled "Open Meetings Act." Therefore, the Parameters and Guidelines for Brown Act were combined with the previous Parameters and Guidelines for the Open Meetings Act. Eligible claimants were required to file initial reimbursement claims with the State Controller's Office (SCO) by October 1, 2002. The SCO provided the unaudited actual claim totals to the Commission on December 4, 2002. The claims data was utilized to develop a statewide cost estimate that includes seven fiscal years for a total of **\$22,836,000**.

#### Staff Recommendation

Staff recommends that the Commission adopt the proposed statewide cost estimate of **\$22,836,000** for costs incurred in complying with The Brown Act provisions.

## Proposed Statewide Cost Estimate

Government Code Sections 54952, 54954.2, 54954.3, 54957.1, and 54957.7

Statutes 1986, Chapter 641

Statutes 1993, Chapters 1136, 1137 and 1138

### *Brown Act Reform*

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#### **Mandate Background**

The test claim legislation expanded the types of "legislative bodies" required to comply with the notice and agenda requirements of the Ralph M. Brown Act, and required all "legislative bodies" of local agencies and school districts to perform a number of additional activities in relation to the closed session requirements of the Brown Act.

The City of Newport Beach filed the test claim on December 29, 1994. The Commission adopted the Statement of Decision on June 28, 2001, and the Parameters and Guidelines on April 25, 2002. The Commission previously adopted Parameters and Guidelines for two test claims entitled "Open Meetings Act." Therefore, the Parameters and Guidelines for Brown Act were combined with the previous Parameters and Guidelines for the Open Meetings Act. Beginning in Fiscal Year (FY) 2001-02, claimants may use a unit cost to file combined claims for both acts. However, the Parameters and Guidelines specify that claimants may not file previously claimed Open Meetings Act costs under the new combined Parameters and Guidelines.

Eligible claimants were required to file initial reimbursement claims with the SCO by October 1, 2002. The SCO provided the unaudited actual claim totals to the Commission on December 4, 2002. The claims data was utilized to develop a statewide cost estimate that includes seven fiscal years for a total of \$22,836,000.

#### **Eligible Claimants**

Any county, city, a city and county, school or special district that incurs increased costs as a result of this reimbursable state mandated program is eligible to claim reimbursement of those costs.

#### **Period of Reimbursement**

Costs incurred on or after January 1, 1994 are eligible for reimbursement. Initial years' costs shall not include any costs that were claimable or reimbursed pursuant to *Open Meetings Act* Parameters and Guidelines as amended on December 4, 1991 or November 30, 2000.

Reimbursement for these costs must be claimed as prescribed in the Controller's Claiming Instructions No. 2000-15 and 2000-16 for local agencies and schools, respectively.

Annual claims, commencing with the 2001-2002 fiscal year, shall include all costs for *Open Meetings Act* and *Brown Act Reform*.

## Reimbursable Activities

As stated previously, these Parameters and Guidelines include activities for both the Open Meetings Act and Brown Act test claims. The new eligible claimants and activities related to the Brown Act program are shown below in underline. These are the only activities for which this statewide cost estimate was developed.

For each eligible claimant, the following activities are eligible for reimbursement:

### A. Agenda Preparation and Posting Activities

1. Prepare a single agenda for a regular meeting of a legislative body of a local agency or school district containing a brief description of each item of business to be transacted or discussed at a regular meeting, including items to be discussed in closed session, and citing the time and location of the regular meeting.<sup>1</sup> (Gov. Code, § 54954.2, subd. (a).)
2. Post a single agenda 72 hours before a meeting in a location freely accessible to the public. Further, every agenda must state that there is an opportunity for members of the public to comment on matters that are within the subject matter jurisdiction of the legislative body, subject to exceptions stated therein. (Gov. Code, §§ 54954.2, subd. (a), and 54954.3, subd. (a).)

Beginning January 1, 1994, the following types of "legislative bodies" are eligible to claim reimbursement under these parameters and guidelines for the activities listed in section IV.A:

- Local Bodies created by state or federal statute.
- Standing Committees with less than a quorum of members of the legislative body that has a continuing subject matter jurisdiction or a meeting schedule fixed by formal action.
- Permanent & Temporary Advisory Bodies (except bodies of less than a quorum of the members of the legislative body).

Beginning January 1, 1994, the following "legislative bodies" are eligible to claim reimbursement under these parameters and guidelines for the preparation of a brief general description of closed session agenda items, using either the actual or standard time reimbursement options pursuant to section V.A.1 or 2:

- Governing board, commission, directors or body of a local agency or any board or commission thereof, as well as any board, commission, committee, or other body on which officers of a local agency serve in their official capacity.
- Any board, commission, committee, or body, which exercises authority, delegated to it by the legislative body.
- Planning commissions, library boards, recreation commissions, and other permanent boards or commissions of a local agency composed of at least a quorum of the members of the legislative body.
- Local Bodies created by state or federal statute.

<sup>1</sup> As amended by Statutes 1993, chapter 1136.

- Standing Committees with less than a quorum of members of the legislative body that has a continuing subject matter jurisdiction or a meeting schedule fixed by formal action.
- Permanent & Temporary Advisory Bodies (except bodies of less than a quorum of the members of the legislative body).

#### B. Closed Session Activities

1. Disclose in an open meeting, prior to holding any closed session, each item to be discussed in the closed session. (Gov. Code, § 54957.7, subd. (a).)
2. Reconvene in open session prior to adjournment to make any disclosures required by Section 54957.1 of action taken in the closed session, including items as follows: (Gov. Code, § 54957.7, subd. (b).)
  - a. Approval of an agreement concluding real estate negotiations as specified in Section 54956.8. (Gov. Code, § 54957.1, subd. (a)(1).)
  - b. Approval given to its legal counsel to defend, or seek or refrain from seeking appellate review or relief, or to enter as an amicus curiae in any form of litigation as the result of consultation under Section 54956.9. (Gov. Code, § 54957.1, subd. (a)(2).)
  - c. Approval given to its legal counsel of a settlement of pending litigation as defined in Section 54956.9, at any stage prior to or during a judicial or quasi-judicial proceeding shall be reported after the settlement is final. (Gov. Code, § 54957.1, subd. (a)(3).)
  - d. Disposition reached as to claims discussed in closed session pursuant to Section 54956.95 shall be reported as soon as reached in a manner that identifies of the name of the claimant, the name of the local agency claimed against, the substance of the claim, and any monetary amount approved for payment and agreed upon by the claimant. (Gov. Code, § 54957.1, subd. (a)(4).)
  - e. Approval of an agreement concluding labor negotiations with represented employees pursuant to Section 54957.6 shall be reported after the agreement is final and has been accepted or ratified by the other party. (Gov. Code, § 54957.1, subd. (a)(6).)
3. Provide copies of any contracts, settlement agreements, or other documents that were finally approved or adopted in the closed session to a person who submitted a written request within the timelines specified or to a person who has made a standing request, as set forth in Sections 54954.1 or 54956 within the time lines specified. (Gov. Code, § 54957.1, subd. (b) and (c).)
4. Train members of only those legislative bodies that actually hold closed executive sessions, on the closed session requirements of *Brown Act Reform*. If such training is given to all members of the legislative body, whether newly appointed or existing members, contemporaneously, time of the trainer and legislative members is reimbursable. Additionally, time for preparation of training materials, obtaining materials including training videos and audio visual aids, and training the trainers to

conduct the training is reimbursable. See Section V.B.6 of these parameters and guidelines.

Beginning January 1, 1994, the following "legislative bodies" are eligible to claim reimbursement under these parameters and guidelines for the activities listed in IV.B:

- Governing board, commission, directors or body of a local agency or any board or commission thereof, as well as any board, commission, committee, or other body on which officers of a local agency serve in their official capacity.
- Any board, commission, committee, or body which exercises authority delegated to it by the legislative body.
- Planning commissions, library boards, recreation commissions, and other *permanent* boards or commissions of a local agency composed of at least a quorum of the members of the legislative body.
- Local Bodies created by state or federal statute.
- Standing Committees with less than a quorum of members of the legislative body that has a continuing subject matter jurisdiction or a meeting schedule fixed by formal action.
- Permanent & Temporary Advisory Bodies (except bodies of less than a quorum of the members of the legislative body).

### **Assumptions**

Staff made the following assumptions:

- The claiming data is accurate, although unaudited.
- There may be late or amended claims filed. However, if actual claims exceed the statewide cost estimate, the SCO will report the deficiency to the Legislature for inclusion in the next year's claims bill.
- In FY 2001-02, there will be an increase in the number of claims filed because this is the first year that claimants are required to file combined reimbursement claims for both Open Meetings Act and Brown Act programs. However, the total amount of the reimbursement claims does not include amounts previously claimed under the Open Meetings Act program.

### **Methodology**

To arrive at the total statewide cost estimate:

- Staff used unaudited actual claims filed with the SCO for prior FYs by eligible claimants.<sup>2</sup>

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<sup>2</sup> State Controller's Office data as of December 4, 2002.

- Staff projected totals for FY 2002-03 by multiplying the FY 2001-02 claim total filed by claimants with the SCO times the implicit price deflator for 2002-03 (2.2%), as forecasted by the Department of Finance. Staff projected totals for FY 2003-04 by multiplying the 2002-03 estimate by the implicit price deflator for 2003-04 (3.2%).

Following is a breakdown of estimated total costs per fiscal year:

Fiscal Year	# Of School District Claims Filed With SCO	Amount Claimed by School Districts	# Of City & County Claims Filed With SCO	Amount Claimed by Cities & Counties	Combined Claim Totals
1993-94	87	\$ 92,227	186	\$ 220,584	\$ 312,811
1994-95	111	\$ 193,915	224	\$ 478,851	\$ 672,766
1995-96	117	\$ 214,664	236	\$ 537,543	\$ 752,207
1996-97	130	\$ 230,527	246	\$ 584,256	\$ 814,783
1997-98	120	\$ 212,967	199	\$ 480,821	\$ 693,788
1998-99	129	\$ 223,027	201	\$ 502,170	\$ 725,197
1999-00	133	\$ 258,873	207	\$ 527,577	\$ 786,450
2000-01	145	\$ 381,512	218	\$ 598,250	\$ 979,762
2001-02	741 <sup>3</sup>	\$ 4,104,603	263	\$1,452,791	\$ 5,557,394
2002-03 (2.2% <sup>4</sup> )	n/a	\$ 4,194,904	n/a	\$1,484,752	\$ 5,679,656
2003-04 (3.2% <sup>5</sup> )	n/a	\$ 4,329,141	n/a	\$1,532,264	\$ 5,861,405
Subtotals		\$14,436,360		\$8,399,859	\$22,836,219
Total					\$22,836,219
Statewide Cost Estimate Total (Rounded)					\$ 22,836,000

#### Staff Recommendation

Staff recommends that the Commission adopt the proposed statewide cost estimate of **\$22,836,000** for costs incurred in complying with the *Open Meetings Act/Brown Act Reform* provisions.

<sup>3</sup> There were five times the number of claims filed in FY 2001-02 over those filed in FY 2000-01. According to the SCO, upon initial review of the claims it appears that the claims were filed by new claimants that, as of 2001-02, may file a unit cost for both Open Meetings Act and Brown Act programs, and that the claims do not appear to include previously filed amounts for the Open Meetings Act.

<sup>4</sup> Implicit Price Deflator as forecast by Department of Finance.

<sup>5</sup> *Ibid.*

**ORIGINAL**

PUBLIC HEARING  
COMMISSION ON STATE MANDATES

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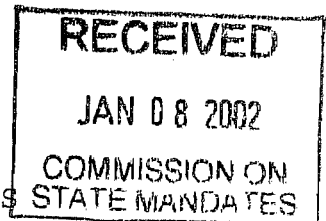
TIME: 9:32 a.m.

DATE: Thursday, December 19, 2002

PLACE: Commission on State Mandates  
State Capitol, Room 126  
Sacramento, California

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REPORTER'S TRANSCRIPT OF PROCEEDINGS



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Reported By:

KAREN S. CHALLE  
CSR #8244, RPR

**NC**  
**CR**

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1355

A P P E A R A N C E S

COMMISSIONERS PRESENT

ANNETTE PORINI, Chair  
Representative of B. TIMOTHY GAGE  
Director  
State Department of Finance

WILLIAM SHERWOOD, Vice Chair  
Representative of PHILIP ANGELIDES  
State Treasurer

WALTER BARNES, Chief Deputy State Controller  
~~Finance~~

SHERRY WILLIAMS, Legislative Analyst *Representative of Tol Finney*  
*Interim Director, Office of Planning and Research*  
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*John Lazar, City Council Member*  
*City of Turlock*

COMMISSION STAFF PRESENT

PAULA HIGASHI, Executive Director

CAMILLE SHELTON, Staff Counsel

SHIRLEY OPIE, Assistant Executive Director

NANCY PATTON, Staff Services Manager

KATHERINE TOKARSKI, Commission Counsel

PAUL M. STARKEY, Chief Legal Counsel

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I N D E X

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V. Information Hearing Pursuant to California Code of Regulations, Title 2, Chapter 2.5, Article 8 (action)	
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Item 3 Brown Act Reform, CSM 4469 City of Newport Beach, Claimant Statutes 1993, Chapter 1136 (AB 1426) Statutes 1993, Chapter 1137 (SB 36) Statutes 1993, Chapter 1138 (SB 1140) Statutes 1994, Chapter 32 (SB 652) and Consolidation with Open Meetings Act, CSM 4257 Statutes 1986, Chapter 641 (AB 2674)	
Item 4 Animal Adoption, 98-TC-11 County of Los Angeles, City of Lindsay, County of Tulare, County of Fresno and Southeast Area Animal Control Authority, Claimants . . . . .	8

1 Motion?

2 MR. SHERWOOD: Move for approval.

3 MS. WILLIAMS: Second.

4 CHAIR PORINI: We've a motion and a second. We'll  
5 adopt those unanimously.

6 Moving on.

7 MS. HIGASHI: The first consent calendar consisted  
8 of one item, the statement ~~and issue of~~ <sup>of decision for</sup> adoption.

9 MS. PORINI: All right. Don't imagine anyone  
10 wants to take that item off of consent. So do I have a  
11 motion to adopt the consent calendar?

12 MS. WILLIAMS: So moved.

13 MR. LAZAR: Second.

14 CHAIR PORINI: So moved and seconded to adopt the  
15 consent calendar. All in favor?

16 (A chorus of "ayes" were heard.)

17 CHAIR PORINI: All opposed?

18 Consent calendar carries.

19 MS. HIGASHI: I'd like to note that item three,  
20 the item cost being proposed to that area to allow for more  
21 data analysis of claims that are on file, and we will bring  
22 that back to you once we have an estimate. That is coming  
23 too.

24 This brings us to our next statement. Cost  
25 estimate, Item 4, on the Animal Adoption Test Claim.

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REPORTER'S CERTIFICATE

STATE OF CALIFORNIA     )  
                                  )        ss.  
COUNTY OF SACRAMENTO   ).


I, KAREN S. CHALLE, a Certified Shorthand  
Reporter, licensed by the state of California and empowered  
to administer oaths and affirmations pursuant to Section  
2093 (b) of the Code of Civil Procedure, do hereby certify:

That the said proceedings were recorded  
stenographically by me and were thereafter transcribed  
under my direction via computer-assisted transcription;

That the foregoing transcript is a true record of  
the proceedings which then and there took place;

That I am a disinterested person to said action.

IN WITNESS WHEREOF, I have subscribed my name on  
January 3, 2003.

  
Karen S. Challe

Certified Shorthand Reporter No. 8244



## **MINUTES**

### **COMMISSION ON STATE MANDATES**

State Capitol, Room 126

Sacramento, California

December 19, 2002

**Present:** Chairperson Annette Porini  
Representative of the Director of the Department of Finance  
Member William Sherwood  
Representative of the State Treasurer  
Member Sherry Williams  
Representative of the Director of the Office of Planning and Research  
Member Walter Barnes  
Representative of the State Controller  
Member John Lazar  
City Council Member

**Vacant:** Local Elected Official  
Public Member

### **CALL TO ORDER AND ROLL CALL**

Chairperson Porini called the meeting to order at 9:32 a.m.

### **APPROVAL OF MINUTES**

Item 1 November 21, 2002

Upon motion by Member Sherwood and second by Member Williams, the minutes were unanimously adopted.

### **PROPOSED CONSENT CALENDAR**

HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (action)

#### **PROPOSED STATEMENT OF DECISION - TEST CLAIM**

Item 2 *Eastview Optional Attendance Area*, 99-TC-01  
Palos Verdes Peninsula Unified School District, Claimant  
Statutes 1998, Chapter 868 (SB 1681) and  
Test Claim Amendment 01-TC-06  
Education Code Section 48200  
As Amended by Statutes 1987, Chapter 1452 (SB 998)

Member Williams moved for adoption of the consent calendar, which consisted of item 2. With a second by Member Lazar, the consent calendar was unanimously adopted.

INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF  
REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

STATEWIDE COST ESTIMATES

- Item 3      *Brown Act Reform*, CSM 4469  
City of Newport Beach, Claimant  
Statutes 1993, Chapter 1136 (AB 1426)  
Statutes 1993, Chapter 1137 (SB 36)  
Statutes 1993, Chapter 1138 (SB 1140)  
Statutes 1994, Chapter 32 (SB 752) and  
Consolidation with *Open Meetings Act*, CSM 4257  
Statutes 1986, Chapter 641 (AB 2674)

Item 3 was postponed by staff.

- Item 4      *Animal Adoption*, 98-TC-11  
County of Los Angeles, City of Lindsay, County of Tulare, County of Fresno  
and Southeast Area Animal Control Authority, Claimants  
Civil Code Sections 1834, 1846; Food and Agriculture Code Sections 31108,  
31752, 31752.5, 31753, 32001, and 32003;  
Statutes 1998, Chapter 752 (SB 1785)

Nancy Patton, Staff Services Manager, presented this item. She indicated that this proposed statewide cost estimate was originally presented at the October 2002 hearing, but was continued to allow the Department of Finance time to review the program's reimbursement claims. In a letter dated December 2, 2002, the Department of Finance stated that the claims appeared to be consistent with the parameters and guidelines. However, Ms. Patton noted that the Department of Finance continues to disagree with the Commission's decision on the program.

Ms. Patton explained that Commission staff requested updated claims data from the State Controller to develop a revised proposal. To address the error found by the Department of Finance in one of the reimbursement claims, staff subtracted \$30,000 from the total proposed estimate. Staff recommended that the Commission adopt the proposed statewide cost estimate of \$79,153,000 for the *Animal Adoption* program.

Parties were represented as follows: Leonard Kaye, representing the County of Los Angeles; Allan Burdick and Juliana Gmur, representing the California State Association of Counties, County of Tulare, City of Lindsay, and County of Fresno; and Rachel LaFlam and Tom Lutzenburger, for the Department of Finance.

Mr. Kaye and Mr. Burdick recommended that the Commission adopt staff's proposed statewide cost estimate.

Mr. Lutzenburger stated that the reviewed reimbursement claims had no major issues with regard to violations or extreme outliers in the parameters and guidelines. He noted that staff adjusted the proposed estimate to correct one minor technical error. He also noted that there were ambiguities in the parameters and guidelines that were resulting in large claims. He encouraged the State Controller's Office to perform additional review of claims.

Member Barnes made a motion to adopt the staff recommendation. With a second by Member Lazar, the motion carried unanimously.

Paula Higashi, Executive Director, noted that the Department of Finance may propose amendments to the parameters and guidelines if they believe that there are ambiguities.

ADOPTION OF REGULATIONS PURSUANT TO GOVERNMENT CODE  
SECTION 17527, SUBDIVISION (g).

- Item 5      Adoption of Proposed Amendments to California Code of Regulations, Title 2, Chapter 2.5, Article 1. General, Article 3. Test Claims, Article 5. Other Claims, and Article 6. Cost Savings Claims, As Modified on December 6, 2002 After Close of Public Comment and 15-day Re-notice Periods

Shirley Opie, Assistant Executive Director, presented this item. She noted that the rulemaking package was initiated in July 2002 to conform the Commission's regulations to the Government Code in four primary areas: 1) accepting more than one test claim on the same statute or executive order, 2) reviewing incorrect reduction claims, 3) directing the Office of State Controller to modify the claiming instructions when the Commission determines that the instructions do not conform to the parameters and guidelines, and 4) reconsidering statements of decision.

Ms. Opie indicated that a public hearing was conducted on September 25, 2002, which coincided with the expiration of the 45-day comment period. On November 20, 2002, the Commission provided a 15-day notice of changes to the original rulemaking to implement the new statutory requirements of Statutes 2002, chapter 1124, which increased the threshold amount for filing a test claim from \$200 to \$1000, and established a statute of limitations for filing test claims.

Staff recommended that the Commission adopt the proposed regulatory text as modified after the close of the public comment period, and authorize staff to make any technical, non-substantive edits before sending the package to the Office of Administrative Law.

Parties were represented as follows: Allan Burdick, representing the California State Association of Counties.

Mr. Burdick made the following remarks:

1. If the IRS accepts the postmark date on a document, it should be good enough for filings with the Commission.
2. In lieu of using tabs to organize a filing, blank pages should be used.
3. The California State Association of Counties was the lead agency and a sponsor of the Assembly Bill that created the change related to the filing of a test claim without the approval of the Executive Director. The primary objective of that legislation was to allow parties in a particular jurisdiction (i.e., cities, counties, schools) to file a claim so that they also have an opportunity to be a test claimant. If a local agency files a test claim within the allowed time frame, there should be no conditions placed upon them.
4. Incorrect reduction claim filings can be very voluminous, and since they are a matter between the State Controller and a local agency, they should not be subject to the same requirements as test claims. The State Controller should have more discretion about what documentation needs to be included in a filing.

Member Lazar requested that staff respond to Mr. Burdick's comments.

Regarding the issue of the postmark date, Ms. Opie noted that it was an issue of practicality and clarified that the filing date was based on the model as defined by the California Rules of Court. With respect to the tabs, she stated that Mr. Burdick's suggestion was acceptable. As to the issue of filing claims without the approval of the Executive Director, she explained that the regulation did not preclude claimants from filing multiple claims, but rather required them to distinguish the need to do so. She stated that it was necessary to protect the quasi-administrative nature of the claim, which is the whole premise that the test claim statutes are built on, and added that claimants have the right to appeal to the Commission if they disagree with the Executive Director's decision. Regarding incorrect reduction claim filings, she indicated that the regulations did not preclude the State Controller from requesting additional documents if needed.

Mr. Burdick reiterated that the postmark date should be adequate. Regarding incorrect reduction claim filings, he commented that it was best when parties can get together to resolve issues rather than spend a lot of time and money on submitting things in writing.

Member Lazar asked Paul Starkey, Chief Legal Counsel, about the process for deadlines with respect to other commissions. Mr. Starkey stated that, in his experience, a certification clarifies issues about a correct postmark. He added that staff proposed the change primarily because it is the method requested by the courts.

In addition, Mr. Starkey agreed with Mr. Burdick's comment about parties getting together to resolve issues. However, he noted that disputed issues are better put in writing in order to get them resolved.

Member Williams made a motion to adopt the staff recommendation on the regulations. With a second by Member Sherwood, the motion carried unanimously.

## **EXECUTIVE DIRECTOR'S REPORT**

### **Item 6      Workload, Legislation, Next Agenda**

Ms. Higashi noted the following:

- *Workload.* One new test claim and a petition for rulemaking were received since the last report. The petition for rulemaking will come before the Commission at the January hearing.
- *Legislation.*
  - A. Excerpts from the "Mid-Year Spending Reduction Proposals" report recently issued by Governor Davis were referenced, as follows:
    - Department of Education. The Administration proposes to defer the payment of \$870 million of claims for state mandates in fiscal year 2003-2004, and identified the Controller's projected mandate deficiencies. The text also indicated the Administration's intent to review and reform the Commission's processes.
    - Non-Proposition 98 Mandate Funding. The Legislative Analyst's Office reported at a budget hearing earlier in the week that the non-proposition 98 cost of mandates deferral is now estimated at about \$1.2 billion.

- Reduction in State Operations. The Commission has a reduction of \$98,000 proposed for current year.

B. The Mandates training is postponed until January.

- *Future Hearing Agendas*. The January agenda will consist of the election of officers, new test claims, the *School Bus Safety II* proposed parameters and guidelines, incorrect reduction claims, and statewide cost estimates. The February Agenda will consist of test claims and a possible series of parameters and guidelines and amendments.

## **PUBLIC COMMENT**

Regarding Ms. Higashi's reference to the deferral of mandates, Mr. Burdick commented that it was a problem for local agencies to continue to see payments being deferred. He suggested that it would be an appropriate matter for the Commission to address by either contacting the Governor's office or the Legislature. Chairperson Porini noted that staff has had discussions with legislative staff. Ms. Higashi added that the legislative staff was looking at all existing mandates and was open to receiving comments from all interested persons at the hearing.

Ms. Courtney Dixon, Commission Student Assistant, came forward as Chairperson Porini acknowledged and thanked her for her two and a half years of service with the Commission.

## **CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526.**

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126, subdivision (e)(1):

1. *San Diego Unified School District and San Juan Unified School District v. Commission on State Mandates, et al.*, Case Number 00CS00810, in the Superior Court of the State of California, County of Sacramento.  
CSM Case No. 01-L-04 [*Physical Performance Tests*]
2. *County of San Bernardino v. Commission on State Mandates of the State of California, et al.*, Case Number BS07309, in the Superior Court of the State of California, County of Los Angeles.  
CSM Case No. 01-L-10 [*Property Tax Administration*]
3. *City of San Diego v. Commission on State Mandates, et al.*, Case Number D039095 in the Appellate Court of the State of California, Fourth Appellate District, Division 1. CSM Case No. 01-L-15 [*Special Use; Eminent Domain*]
4. *County of San Diego v. Commission on State Mandates, et al.*, Case Number D039471, in the Appellate Court of the State of California, Fourth Appellate District, Division 1. CSM Case No. 01-L-16 [*San Diego MIA*]
5. *County of Los Angeles v. Commission on State Mandates, et al.*, Case Number B156870, in the Appellate Court of the State of California, Second Appellate District. CSM Case No. 01-L-17 [*Domestic Violence*]
6. *County of San Bernardino v. Commission on State Mandates, et al.*, Case Number B158835, in the Appellate Court of the State of California, Second Appellate District. CSM Case No. 01-L-18 [*SEMS*]

7. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Case Number 02CS00994, in the Superior Court of the State of California, County of Sacramento. CSM Case No. 02-L-01 [*School Bus Safety II*]
8. *San Diego Unified School District v. Commission on State Mandates, et al.*, Case Number S109125, in the Supreme Court of the State of California. CSM Case No. 02-L-02 [*Pupil Expulsions*]
9. *State of California, Department of Finance v. Commission on State Mandates, Kern Union High School District; San Diego Unified School District, County of Santa Clara*, Case Number S109219, in the Supreme Court of the State of California. CSM Case No. 02-L-03 [*School Site Councils*]

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

- Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd. (e)(2)(B)(i).)

#### PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a), and 17526.

Discussion and action, if appropriate, on report from the Personnel Sub-Committee.

Hearing no further comments, Chairperson Porini adjourned into closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; and Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

#### REPORT FROM CLOSED EXECUTIVE SESSION

Chairperson Porini reported that the Commission met in closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; and Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

#### ADJOURNMENT

Hearing no further business and upon motion by Member Williams and second by Member Sherwood, Chairperson Porini adjourned the meeting at 10:20 a.m.

  
PAULA HIGASHI  
Executive Director

COMMISSION ON STATE MANDATES

NOTICE AND AGENDA<sup>1</sup>

State Capitol, Room 126  
Sacramento, California

January 23, 2003

9:30 A.M. - PUBLIC SESSION

I. CALL TO ORDER AND ROLL CALL

II. ELECTION OF OFFICERS

Item 1 Staff Report

III. APPROVAL OF MINUTES

Item 2 December 19, 2002

IV. PROPOSED CONSENT CALENDAR (action)

*Note: If there are no objections to any of the following action items designated by an asterisk (\*), the Executive Director will include it on the Proposed Consent Calendar that will be presented at the hearing. The Commission will determine which items will remain on the Consent Calendar.*

V. HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (action)

Note: Witnesses will be sworn in en masse before consideration of Items

A. TEST CLAIMS

Item 3 *Standardized Account Code Structure, 97-TC-17*  
Brentwood Union School District, Claimant  
Statutes 1993, Chapter 237 (SB 94)  
Statutes 1995, Chapter 525 (AB 438)  
Statutes 1997, Chapter 299 (AB 1578)  
State Board of Education's Revision of the California  
School Accounting Manual (Part II)

Item 4 *Teacher Incentive Program, 99-TC-15*  
San Diego Unified School District, Claimant  
Education Code Sections 44395 and 44396  
Statutes 1998, Chapter 331 (AB 858)

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<sup>1</sup> This public meeting notice is available on the Internet at <http://www.csm.ca.gov>.

- Item 5      *Criminal Background Checks II*, 00-TC-05  
Napa County Office of Education, Claimant  
Education Code Sections 44830.1, 44830.2, 45125, 45125.01, and 45125.2  
Penal Code Sections 11077 and 11105.02  
Statutes 1972, Chapter 1437 (AB 1685)  
Statutes 1992, Chapter 1026 (SB 1769)  
Statutes 1998, Chapter 594 (AB 1392)  
Statutes 1998, Chapter 840 (AB 2102)  
Statutes 1999, Chapter 78 (AB 1115)  
California Code of Regulations, Title 11, Sections 700-708

B. INCORRECT REDUCTION CLAIMS

- Item 6      *Certification of Teacher Evaluator's Demonstrated Competence*  
99-4136-I- 01, 02, and 04 through 39  
Ventura County Office of Education, Hayward Unified School District,  
Kings Canyon Joint Unified School District, Visalia Unified School District,  
Salinas City Elementary School District, Conejo Valley Unified School  
District, Claremont Unified School District, Oak Grove Elementary School  
District, Ventura Unified School District, Oceanside City Unified School  
District, Roseville Joint Union High School District, Folsom Cordova  
Unified School District, Palmdale School District, Moreland Elementary  
School District, Novato Unified School District, Modesto City Schools, San  
Benito Union High School District, Manteca Unified School District, El  
Monte Elementary School District, Las Virgenes Unified School District,  
Del Norte County Unified School District, Glendale Unified School District,  
Garden Grove Unified School District, San Lorenzo Unified School District,  
Lompoc Unified School District, Mojave Unified School District, Lodi  
Unified School District, San Juan Unified School District, Los Altos  
Elementary School District, Salinas Union High School District, Los  
Angeles County Office of Education, Morgan Hill Unified School District,  
Fairfield-Suisun Unified School District, Ojai Unified School District,  
Bellflower Unified School District, Berryessa Union School District,  
Livingston Union School District, Whittier Union High School District,  
Claimants  
Education Code Section 35160.5  
Statutes of 1983, Chapter 498 (SB 813)
- Item 7      *Certification of Teacher Evaluator's Demonstrated Competence*  
99-4136-I- 03  
Manhattan Beach Unified School District, Claimant  
Education Code Section 35160.5  
Statutes of 1983, Chapter 498 (SB 813)

C. PROPOSED STATEMENTS OF DECISION - INCORRECT REDUCTION CLAIMS

Item 8\* *Graduation Requirements*, 4435-I-09  
Lompoc Unified School District, Claimant  
Education Code Section 51225.3  
~~Statutes of 1983, Chapter 498 (SB 813)~~

(Item postponed upon request of Claimant)

VI. INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

A. ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES

Item 9 *School Bus Safety II*, 02-PGA-01  
Legislature, Requestor  
Education Code Sections 38048, 39831.3, and 39831.5,  
and Vehicle Code Section 22112  
Statutes 1992 Chapter 624 (AB 3144)  
Statutes 1994 Chapter 831 (SB 2019)  
Statutes 1996, Chapter 277 (SB 1562)  
Statutes 1997, Chapter 739 (AB 1297)  
Statutes 2002, Chapter 1167 (AB 2781)

B. STATEWIDE COST ESTIMATES

Item 10\* *Brown Act Reform*, CSM 4469  
City of Newport Beach, Claimant  
Statutes 1993, Chapter 1136 (AB 1426)  
Statutes 1993, Chapter 1137 (SB 36)  
Statutes 1993, Chapter 1138 (SB 1140)  
Statutes 1994, Chapter 32 (SB 752) and  
*Consolidation with Open Meetings Act*, CSM 4257  
Statutes 1986, Chapter 641 (AB 2674)

Item 11\* *Sex Crime Confidentiality*, 98-TC-21  
City of Hayward, Claimant  
Penal Code Section 293  
Statutes 1992, Chapter 502 (SB 296)  
Statutes 1993, Chapter 555 (AB 191)  
Statutes 1993-94, 1<sup>st</sup> Extraordinary Session, Chapter 36 (ABX1 62)

- Item 12     *Standardized Testing and Reporting*, 97-TC-23  
San Diego Unified School District, Claimant  
Education Code Sections 60607, Subdivision (a), 60609,  
60615, 60630, 60640, 60641, and 60643  
Statutes 1997, Chapter 828 (SB 376)  
California Code of Regulations, Title 5, Sections 850-904

VII. RULEMAKING, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

- Item 13     Petition for Rulemaking: Cost Accounting Principles, Practices,  
and Procedures  
Sixten & Associates, Petitioner
- Item 14\*     Annual Rulemaking Calendar

VIII. EXECUTIVE DIRECTOR'S REPORT (info)

- Item 15     Workload, Legislation, Next Agenda

IX. PUBLIC COMMENT

X. CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE  
SECTIONS 11126 and 17526. (Closed Executive Session may begin at this time or may  
begin earlier on this day and reconvene at the end of the meeting.)

A. PENDING LITIGATION

To confer with and receive advice from legal counsel, for consideration and action, as  
necessary and appropriate, upon the following matters pursuant to Government Code  
section 11126, subdivision (e)(1):

1. *San Diego Unified School District and San Juan Unified School District v. Commission on State Mandates, et al.*, Case Number 00CS00810, in the Superior Court of the State of California, County of Sacramento.  
CSM Case No. 01-L-04 [*Physical Performance Tests*]
2. *City of San Diego v. Commission on State Mandates, et al.*, Case Number D039095 in the Appellate Court of the State of California, Fourth Appellate District, Division 1. CSM Case No. 01-L-15 [*Special Use; Eminent Domain*]
3. *County of San Diego v. Commission on State Mandates, et al.*, Case Number D039471, in the Appellate Court of the State of California, Fourth Appellate District, Division 1. CSM Case No. 01-L-16 [*San Diego MIA*]
4. *County of Los Angeles v. Commission on State Mandates, et al.*, Case Number B156870, in the Appellate Court of the State of California, Second Appellate District. CSM Case No. 01-L-17 [*Domestic Violence*]
5. *County of San Bernardino v. Commission on State Mandates, et al.*, Case Number B158835, in the Appellate Court of the State of California, Second Appellate District. CSM Case No. 01-L-18 [*SEMS*]

6. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Case Number 02CS00994, in the Superior Court of the State of California, County of Sacramento. CSM Case No. 02-L-01 [*School Bus Safety II*]
7. *San Diego Unified School District v. Commission on State Mandates, et al.*, Case Number S109125, in the Supreme Court of the State of California. CSM Case No. 02-L-02 [*Pupil Expulsions*]
8. *State of California, Department of Finance v. Commission on State Mandates, Kern Union High School District; San Diego Unified School District, County of Santa Clara*, Case Number S109219, in the Supreme Court of the State of California. CSM Case No. 02-L-03 [*School Site Councils*]
9. *County of San Bernardino v. Commission on State Mandates of the State of California, et.al.*, Case Number B163801, in the Appellate Court of the State of California, Second Appellate District. CSM Case No. 02-L-04 [*Property Tax Administration*]

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

- Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd. (e)(2)(B)(i).)

#### B. PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a) and 17526.

Discussion and action, if appropriate, on report from the Personnel Sub-Committee.

### XI. REPORT FROM CLOSED EXECUTIVE SESSION

#### ADJOURNMENT

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For information, contact:

Paula Higashi, Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

(916) 323-3562

(916) 445-0278 Fax



## Item 10

### Revised Proposed Statewide Cost Estimate

Government Code Sections 54952, 54954.2, 54954.3, 54957.1, and 54957.7

Statutes 1986, Chapter 641

Statutes 1993, Chapters 1136, 1137 and 1138

#### *Brown Act Reform*

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#### Executive Summary

The test claim legislation expanded the types of “legislative bodies” required to comply with the notice and agenda requirements of the Ralph M. Brown Act (also known as the Open Meetings Act), and required all “legislative bodies” of local agencies and school districts to perform a number of additional activities in relation to the closed session requirements of the Brown Act.

The City of Newport Beach filed the *Brown Act Reform* test claim on December 29, 1994. The Commission adopted the Statement of Decision on June 28, 2001, and the parameters and guidelines on April 25, 2002. The parameters and guidelines for *Brown Act Reform* were combined with the parameters and guidelines previously adopted for the *Open Meetings Act*.

Eligible claimants were required to file initial reimbursement claims with the State Controller’s Office (SCO) by October 1, 2002. The SCO provided the unaudited actual claim totals to the Commission on December 4, 2002. The claims data was used to develop a statewide cost estimate that was issued on December 9, 2002. It included seven fiscal years for a total of \$22,836,000.

In this revised proposed statewide cost estimate, staff excluded FY 2001-02 costs for the *Open Meetings Act* program for purposes of estimating only *Brown Act Reform* costs. The revised proposed statewide cost estimate for seven fiscal years is \$8,834,000 for *Brown Act Reform*.

#### Staff Recommendation

Staff recommends that the Commission adopt the proposed statewide cost estimate of \$8,834,000 for costs incurred in complying with *Brown Act Reform*.

## **Proposed Statewide Cost Estimate**

Government Code Sections 54952, 54954.2, 54954.3, 54957.1, and 54957.7

Statutes 1986, Chapter 641

Statutes 1993, Chapters 1136, 1137 and 1138

### ***Brown Act Reform***

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#### **Mandate Background**

The test claim legislation expanded the types of "legislative bodies" required to comply with the notice and agenda requirements of the Ralph M. Brown Act, and required all "legislative bodies" of local agencies and school districts to perform a number of additional activities in relation to the closed session requirements of the Brown Act.

The City of Newport Beach filed the *Brown Act Reform* test claim on December 29, 1994. The Commission adopted the Statement of Decision on June 28, 2001, and the parameters and guidelines on April 25, 2002. The parameters and guidelines for *Brown Act Reform* were combined with the parameters and guidelines previously adopted for the *Open Meetings Act*. Beginning in Fiscal Year (FY) 2001-02, claimants may use a unit cost to file combined claims for both acts. However, the parameters and guidelines specify that claimants may not file previously claimed *Open Meetings Act* costs under the new combined parameters and guidelines.

Eligible claimants were required to file initial reimbursement claims with the State Controller's Office (SCO) by October 1, 2002. The SCO provided the unaudited actual claim totals to the Commission on December 4, 2002. The claims data was used to develop a statewide cost estimate that was issued on December 9, 2002. It included seven fiscal years for a total of \$22,836,000.

In this revised proposed statewide cost estimate, staff excluded FY 2001-02 costs for the *Open Meetings Act* program for purposes of estimating only *Brown Act Reform* costs. The revised proposed statewide cost estimate for seven fiscal years is \$8,834,000 for *Brown Act Reform*.

#### **Eligible Claimants**

Any county, city, a city and county, school or special district that incurs increased costs as a result of this reimbursable state mandated program is eligible to claim reimbursement of those costs.

#### **Period of Reimbursement**

Costs incurred on or after January 1, 1994 are eligible for reimbursement. Initial years' costs shall not include any costs that were claimable or reimbursed pursuant to *Open Meetings Act* parameters and guidelines as amended on December 4, 1991 or November 30, 2000.

Reimbursement for these costs must be claimed as prescribed in the Controller's Claiming Instructions No. 2000-15 and 2000-16 for local agencies and schools, respectively.

Annual claims, commencing with the 2001-2002 fiscal year, shall include all costs for *Open Meetings Act* and *Brown Act Reform*.

### Reimbursable Activities

As stated previously, these parameters and guidelines include activities for both the *Open Meetings Act* and *Brown Act Reform* test claims. The new eligible claimants and activities related to *Brown Act Reform* are shown below in underline. These are the only activities for which this statewide cost estimate was developed.

For each eligible claimant, the following activities are eligible for reimbursement:

#### A. Agenda Preparation and Posting Activities

1. Prepare a single agenda for a regular meeting of a legislative body of a local agency or school district containing a brief description of each item of business to be transacted or discussed at a regular meeting, including items to be discussed in closed session, and citing the time and location of the regular meeting.<sup>1</sup> (Gov. Code, § 54954.2, subd. (a).)
2. Post a single agenda 72 hours before a meeting in a location freely accessible to the public. Further, every agenda must state that there is an opportunity for members of the public to comment on matters that are within the subject matter jurisdiction of the legislative body, subject to exceptions stated therein. (Gov. Code, §§ 54954.2, subd. (a), and 54954.3, subd. (a).)

Beginning January 1, 1994, the following types of “legislative bodies” are eligible to claim reimbursement under these parameters and guidelines for the activities listed in section IV.A:

- Local Bodies created by state or federal statute.
- Standing Committees with less than a quorum of members of the legislative body that has a continuing subject matter jurisdiction or a meeting schedule fixed by formal action.
- Permanent & Temporary Advisory Bodies (except bodies of less than a quorum of the members of the legislative body).

Beginning January 1, 1994, the following “legislative bodies” are eligible to claim reimbursement under these parameters and guidelines for the preparation of a brief general description of closed session agenda items, using either the actual or standard time reimbursement options pursuant to section V.A.1 or 2:

- Governing board, commission, directors or body of a local agency or any board or commission thereof, as well as any board, commission, committee, or other body on which officers of a local agency serve in their official capacity.
- Any board, commission, committee, or body, which exercises authority, delegated to it by the legislative body.

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<sup>1</sup> As amended by Statutes 1993, chapter 1136.

- Planning commissions, library boards, recreation commissions, and other permanent boards or commissions of a local agency composed of at least a quorum of the members of the legislative body.
- Local Bodies created by state or federal statute.
- Standing Committees with less than a quorum of members of the legislative body that has a continuing subject matter jurisdiction or a meeting schedule fixed by formal action.
- Permanent & Temporary Advisory Bodies (except bodies of less than a quorum of the members of the legislative body).

#### B. Closed Session Activities

1. Disclose in an open meeting, prior to holding any closed session, each item to be discussed in the closed session. (Gov. Code, § 54957.7, subd. (a).)
2. Reconvene in open session prior to adjournment to make any disclosures required by Section 54957.1 of action taken in the closed session, including items as follows: (Gov. Code, § 54957.7, subd. (b).)
  - a. Approval of an agreement concluding real estate negotiations as specified in Section 54956.8. (Gov. Code, § 54957.1, subd. (a)(1).)
  - b. Approval given to its legal counsel to defend, or seek or refrain from seeking appellate review or relief, or to enter as an amicus curiae in any form of litigation as the result of consultation under Section 54956.9. (Gov. Code, § 54957.1, subd. (a)(2).)
  - c. Approval given to its legal counsel of a settlement of pending litigation as defined in Section 54956.9, at any stage prior to or during a judicial or quasi-judicial proceeding shall be reported after the settlement is final. (Gov. Code, § 54957.1, subd. (a)(3).)
  - d. Disposition reached as to claims discussed in closed session pursuant to Section 54956.95 shall be reported as soon as reached in a manner that identifies of the name of the claimant, the name of the local agency claimed against, the substance of the claim, and any monetary amount approved for payment and agreed upon by the claimant. (Gov. Code, § 54957.1, subd. (a)(4).)
  - e. Approval of an agreement concluding labor negotiations with represented employees pursuant to Section 54957.6 shall be reported after the agreement is final and has been accepted or ratified by the other party. (Gov. Code, § 54957.1, subd. (a)(6).)
3. Provide copies of any contracts, settlement agreements, or other documents that were finally approved or adopted in the closed session to a person who submitted a written request within the timelines specified or to a person who has made a standing request, as set forth in Sections 54954.1 or 54956 within the time lines specified. (Gov. Code, § 54957.1, subd. (b) and (c).)

4. Train members of only those legislative bodies that actually hold closed executive sessions, on the closed session requirements of *Brown Act Reform*. If such training is given to all members of the legislative body, whether newly appointed or existing members, contemporaneously, time of the trainer and legislative members is reimbursable. Additionally, time for preparation of training materials, obtaining materials including training videos and audio visual aids, and training the trainers to conduct the training is reimbursable. See Section V.B.6 of these parameters and guidelines.

Beginning January 1, 1994, the following "legislative bodies" are eligible to claim reimbursement under these parameters and guidelines for the activities listed in IV.B:

- Governing board, commission, directors or body of a local agency or any board or commission thereof, as well as any board, commission, committee, or other body on which officers of a local agency serve in their official capacity.
- Any board, commission, committee, or body which exercises authority delegated to it by the legislative body.
- Planning commissions, library boards, recreation commissions, and other *permanent* boards or commissions of a local agency composed of at least a quorum of the members of the legislative body.
- Local Bodies created by state or federal statute.
- Standing Committees with less than a quorum of members of the legislative body that has a continuing subject matter jurisdiction or a meeting schedule fixed by formal action.
- Permanent & Temporary Advisory Bodies (except bodies of less than a quorum of the members of the legislative body).

### Assumptions

Staff made the following assumptions:

- The claiming data is accurate, although unaudited.
- There may be late or amended claims filed. However, if actual claims exceed the statewide cost estimate, the SCO will report the deficiency to the Legislature for inclusion in the next year's claims bill.
- In FY 2001-02, reimbursement claims include costs for both the *Open Meetings Act* and *Brown Act Reform* programs.

### Methodology

To arrive at the total statewide cost estimate:

- Staff used unaudited actual claims filed with the SCO for prior FYs by eligible claimants.<sup>2</sup>

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<sup>2</sup> State Controller's Office data as of December 4, 2002.

- Because 2001-02 claims contain costs for both *Open Meetings Act* and *Brown Act Reform*, staff used FY 2000-01 (the last year *Open Meetings Act* and *Brown Act Reform* claims were not combined) and projected totals for FY 2001-02 by multiplying the 2000-01 claim total filed by claimants times the implicit price deflator for 2001-02 (2.7%), as forecasted by the Department of Finance. Staff projected totals for FY 2002-03 by multiplying the 2001-02 estimate by the implicit price deflator for 2002-03 (2.2%) and projected 2003-04 by multiplying the 2002-03 estimate by the implicit price deflator for 2003-04 (3.2%).

Following is a breakdown of estimated total costs per fiscal year:

Fiscal Year	# Of School District Claims Filed With SCO	Amount Claimed by School Districts	# Of City & County Claims Filed With SCO	Amount Claimed by Cities & Counties	Combined Claim Totals
1993-94	87	\$ 92,227	186	\$ 220,584	\$ 312,811
1994-95	111	\$ 193,915	224	\$ 478,851	\$ 672,766
1995-96	117	\$ 214,664	236	\$ 537,543	\$ 752,207
1996-97	130	\$ 230,527	246	\$ 584,256	\$ 814,783
1997-98	120	\$ 212,967	199	\$ 480,821	\$ 693,788
1998-99	129	\$ 223,027	201	\$ 502,170	\$ 725,197
1999-00	133	\$ 258,873	207	\$ 527,577	\$ 786,450
2000-01	145	\$ 381,512	218	\$ 598,250	\$ 979,762
2001-02 (2.7% <sup>3</sup> )	n/a	\$ 391,813	n/a	\$ 614,403	\$1,006,216
2002-03 (2.2% <sup>4</sup> )	n/a	\$ 400,433	n/a	\$ 627,920	\$1,028,353
2003-04 (3.2% <sup>5</sup> )	n/a	\$ 413,247	n/a	\$ 648,013	\$1,061,260
Subtotals		\$3,013,205		\$5,820,388	\$8,833,593
Total					\$8,833,593
Statewide Cost Estimate Total (Rounded)					\$8,834,000

#### Staff Recommendation

Staff recommends that the Commission adopt the proposed statewide cost estimate of \$8,834,000 for costs incurred in complying with *Brown Act Reform*.

<sup>3</sup> Implicit Price Deflator as forecast by Department of Finance.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

RECEIVED

FEB 27 2003

COMMISSION ON  
STATE MANDATES

--oOo--

PUBLIC HEARING

COMMISSION ON STATE MANDATES

--oOo--

**CORRECTED**

TIME: 9:35 a.m.

DATE: Thursday, January 23, 2003

PLACE: Commission on State Mandates

State Capitol, Room 126

Sacramento, California

--oOo--

**ORIGINAL**

REPORTER'S TRANSCRIPT OF PROCEEDINGS

--oOo--

Reported By:

JAMIE LYNNE OELRICHS CSR

No. #8086

**NC**  
**CR**

**Northern California Court Reporters**

3610 American River Drive, Suite 114 ■ Sacramento, CA 95864-5922  
(916) 485-4949 ■ Toll Free (888) 600-NCCR ■ Fax (916) 485-1735

1379

A P P E A R A N C E S

COMMISSIONERS PRESENT

ROBERT MIYASHIRO, Chair  
Representative of STEVE PEACE  
Director  
Department of Finance

WILLIAM SHERWOOD, Vice Chair  
Representative of PHILIP ANGELIDES  
State Treassurer

SHERRY WILLIAMS  
Representative of TAL FINNEY  
Interim Director, Office of Planning & Research

WALTER BARNES  
Representative of STEVE WESTLY  
State Controller

JOHN S. LAZAR  
City Council Member  
Turlock City Council

COMMISSION STAFF:

PAULA HIGASHI, Executive Director  
PAUL STARKEY, Chief Legal Counsel  
KATHERINE TOKARSKI, Staff Counsel  
NANCY PATTON, Staff Services Manager  
ERIC FELLER, Staff Counsel  
SHIRLEY OPIE, Assistant Executive Director  
CATHY CRUZ, Program Analyst

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I N D E X

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1 MEMBER SHERWOOD: Thank you, Paula.

2 MS. HIGASHI: You will continue as vice  
3 chair. Proposed minutes from the December  
4 hearing.

5 CHAIRMAN MIYASHIRO: Are there any  
6 objections or corrections to the minutes?

7 MEMBER SHERWOOD: Move for approval.

8 MEMBER WILLIAMS: Second.

9 CHAIRMAN MIYASHIRO: All those in favor?

10 MEMBER SHERWOOD: Aye.

11 MEMBER WILLIAMS: Aye.

12 MEMBER BARNES: Aye.

13 MEMBER LAZAR: Aye.

14 CHAIRMAN MIYASHIRO: Opposed? The minutes  
15 are adopted.

16 MS. HIGASHI: Mr. Miyashiro, just for  
17 clarification, since you weren't at that meeting --

18 CHAIRMAN MIYASHIRO: That's true.

19 MS. HIGASHI: -- I want to clarify that  
20 you're abstaining.

21 CHAIRMAN MIYASHIRO: I will abstain from  
22 that vote.

23 MS. HIGASHI: This brings us to the  
24 proposed consent calendar. And you should all have  
25 that before you. It is this very pretty teal blue

1 or turquoise blue sheet. The items on the proposed  
2 consent calendar are the statewide cost estimates  
3 for Brown Act Reform and Sex Crime Confidentiality,  
4 and the annual rulemaking calendar.

5 CHAIRMAN MIYASHIRO: Just to make sure I'm  
6 doing this properly, do we have any other objections  
7 or corrections to that consent calendar?

8 MEMBER SHERWOOD: No.

9 CHAIRMAN MIYASHIRO: Hearing none, do I  
10 have a motion?

11 MEMBER WILLIAMS: So moved.

12 MEMBER SHERWOOD: Second.

13 CHAIRMAN MIYASHIRO: All those in favor  
14 say aye. Aye.

15 MEMBER SHERWOOD: Aye.

16 MEMBER WILLIAMS: Aye.

17 MEMBER BARNES: Aye.

18 MEMBER LAZAR: Aye.

19 CHAIRMAN MIYASHIRO: Opposed? The consent  
20 calendar is adopted.

21 MS. HIGASHI: Item 3 has been postponed.  
22 And that brings us to items 4, 5, 6 and 7. This  
23 portion of our meeting is the Article 7 hearing  
24 portion of our meeting. And the witnesses and  
25 representatives for this portion of the meeting, if



## **MINUTES**

### **COMMISSION ON STATE MANDATES**

State Capitol, Room 126

Sacramento, California

January 23, 2003

Present: Chairperson Robert Miyashiro  
Representative of the Director of the Department of Finance  
Member William Sherwood  
Representative of the State Treasurer  
Member Sherry Williams  
Representative of the Director of the Office of Planning and Research  
Member Walter Barnes  
Representative of the State Controller  
Member John Lazar  
City Council Member

Vacant: Local Elected Official  
Public Member

### **CALL TO ORDER AND ROLL CALL**

Vice Chairperson Sherwood called the meeting to order at 9:35 a.m.

### **ELECTION OF OFFICERS**

#### Item 1      Staff Report

Paula Higashi, Executive Director, conducted the election of officers. Member Sherwood nominated Mr. Steve Peace, the Director of the Department of Finance, as Chairperson. With a second by Member Williams, Mr. Peace was unanimously elected. Member Lazar nominated Mr. Philip Angelides, State Treasurer, as Vice Chairperson. With a second by Member Sherwood, Mr. Angelides was unanimously elected.

### **APPROVAL OF MINUTES**

#### Item 2      December 19, 2002

Upon motion by Member Sherwood and second by Member Williams, the minutes were adopted. Chairperson Miyashiro abstained.

### **PROPOSED CONSENT CALENDAR**

INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS,  
TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

#### STATEWIDE COST ESTIMATES

Item 10      *Brown Act Reform*, CSM 4469  
City of Newport Beach, Claimant  
Statutes 1993, Chapter 1136 (AB 1426)  
Statutes 1993, Chapter 1137 (SB 36)  
Statutes 1993, Chapter 1138 (SB 1140)

Statutes 1994, Chapter 32 (SB 752) and  
Consolidation with *Open Meetings Act*, CSM 4257  
Statutes 1986, Chapter 641 (AB 2674)

- Item 11     *Sex Crime Confidentiality*, 98-TC-21  
City of Hayward, Claimant  
Penal Code Section 293  
Statutes 1992, Chapter 502 (SB 296)  
Statutes 1993, Chapter 555 (AB 191)  
Statutes 1993-1994, 1<sup>st</sup> Extraordinary Session, Chapter 36 (ABX1 62)

**RULEMAKING, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)**

- Item 14     Annual Rulemaking Calendar

Member Williams moved for adoption of the consent calendar, which consisted of items 10, 11, and 14. With a second by Member Sherwood, the consent calendar was unanimously adopted.

**HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF  
REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (action)**

**TEST CLAIMS**

- Item 3     *Standardized Account Code Structure*, 97-TC-17  
Brentwood Union School District, Claimant  
Statutes 1993, Chapter 237 (SB 94)  
Statutes 1995, Chapter 525 (AB 438)  
Statutes 1997, Chapter 299 (AB 1578)  
State Board of Education's Revision of the California  
School Accounting Manual (Part II)

Item 3 was postponed.

- Item 4     *Teacher Incentive Program*, 99-TC-15  
San Diego Unified School District, Claimant  
Education Code Sections 44395 and 44396  
Statutes 1998, Chapter 331 (AB 858)

Katherine Tokarski, Commission Counsel, presented this item. She noted that the claimant submitted a test claim alleging a reimbursable state mandate upon school districts for new activities and costs related to the administration of the \$10,000 merit award for public school teachers certified by the National Board for Professional Teaching Standards. The claimant asserted that Education Code section 44395, subdivision (c), requires school districts to ensure that teachers are informed about the merit award and to provide information and application materials to interested teachers, and that Education Code section 44396 requires school districts to accept and forward the teachers' application to the Department of Education for review and approval. Further, the claimant alleged that for those teachers whose applications were approved by the Department of Education, Education Code section 44396, subdivision (d), requires school districts to process those incentive awards, which results in the school districts paying associated benefits and employer costs, including contributions to the State Teachers Retirement System or Public Employees Retirements System, and premiums for unemployment insurance, workers'

compensation, Medicare, and life insurance.

Ms. Tokarski indicated that the Department of Finance agreed that the test claim legislation imposes a new program or higher level of service, but believed that the costs should be minimal. Staff noted that Education Code section 44395, subdivision (c), was substantively amended by Statutes 2000, chapter 70 which, effective July 5, 2000, no longer requires districts to inform teachers about the merit award program. Also, the Department of Finance concurred that Education Code section 44396, subdivision (d), imposes a new program or higher level of service by requiring school districts to allocate funds to teachers whose applications were approved by the Department of Education. However, the Department of Finance does not agree that Statutes 1998, chapter 331 requires school districts to pay employer costs associated with the award payments.

Staff concluded that Education Code sections 44395 and 44396, as added by Statutes 1998, chapter 331, impose a reimbursable state-mandated program for the new activities specified in the staff analysis. Staff recommended that the Commission adopt the staff analysis, which partially approves this test claim.

Parties were represented as follows: Art Palkowitz, representing the San Diego Unified School District; and Susan Geanacou and Michael Wilkening, for the Department of Finance.

Mr. Palkowitz stated that at issue were the benefits and employer costs associated with the payment of the incentive award that school districts pay. Regarding staff's reliance on the *City of Richmond* case and the *County of Los Angeles* case, he argued that it was misplaced because the cases applied to all employees throughout the state and were not unique to local government. This test claim only applied to employees of local government.

Also, Mr. Palkowitz noted that there was a case in the Third District Court of Appeal that applied to this test claim. In that case, the court held that a local agency was entitled to reimbursement of increased costs when there was no reasonable alternative. He explained that, here, once a school district gets an award, it has no choice but to pay the associated benefits and employer costs. Therefore, he maintained that school districts should be reimbursed for those costs.

Mr. Wilkening concurred with the staff analysis, and stated that the Department of Finance did not agree that costs associated with payment of the incentive award were reimbursable.

Regarding the case in the Third District Court of Appeal referred to by Mr. Palkowitz, Ms. Geanacou noted that it was the Brown Act School Site Councils decision. She indicated that it was on review before the Supreme Court.

Chairperson Miyashiro requested clarification regarding what was being recognized as a new program. Mr. Wilkening provided clarification. Mr. Palkowitz noted for the record that every employer-related cost incurred by school districts as a result of payment of the incentive award should be reimbursable.

Member Sherwood made a motion to adopt the staff recommendation. With a second by Member Williams, the motion carried unanimously.

Item 5      *Criminal Background Checks II*, 00-TC-05  
Napa County Office of Education, Claimant  
Education Code Sections 44830.1, 44830.2, 45125, 45125.01, and 45125.2  
Penal Code Sections 11077 and 11105.02  
Statutes 1972, Chapter 1437 (AB 1685)  
Statutes 1992, Chapter 1026 (SB 1769)  
Statutes 1998, Chapter 594 (AB 1392)  
Statutes 1998, Chapter 840 (AB 2102)  
Statutes 1999, Chapter 78 (AB 1115)  
California Code of Regulations, Title 11, Sections 700-708

Eric Feller, Commission Counsel, presented this item. He noted that the test claim legislation was an amendment to the Michelle Montoya School Safety Act of 1997, which the Commission found to impose a reimbursable state-mandated program upon school districts. That statement of decision was adopted in 1999.

Staff concluded that the following activities constitute a new program or higher level of service within the meaning of article XIII B, section 6 of the Constitution and Government Code section 17514:

- Communicating with the Department of Justice and related activities,
- Storing Department of Justice documents in a separate locked file,
- Destroying Department of Justice information,
- Requesting the Department of Justice to forward non-certificated employees' fingerprint cards to the FBI,
- Maintaining a list of the current number of employees who have not completed the requirements of Education Code section 45125,
- Requesting subsequent arrest service from the Department of Justice for certificated and non-certificated positions, and
- Taking precautions in dealing with contractors.

Staff recommended that the Commission adopt the staff analysis and approve the test claim for the specified activities.

Parties were represented as follows: David Scribner, representing the claimant; and Cheryl Black, Susan Geanacou, and Blake Johnson, for the Department of Finance.

Mr. Scribner asked the Commission to adopt the staff analysis and approve the test claim for the specified activities.

Mr. Johnson stated that the Department of Finance concurred with the staff analysis.

Member Williams made a motion to adopt the staff analysis. With a second by Member Sherwood, the motion carried unanimously.

## INCORRECT REDUCTION CLAIMS

- Item 6      *Certification of Teacher Evaluator's Demonstrated Competence*  
99-4136-I-01, -02, and -04 through -39  
Ventura County Office of Education, Hayward Unified School District, Kings Canyon Joint Unified School District, Visalia Unified School District, Salinas City Elementary School District, Conejo Valley Unified School District, Claremont Unified School District, Oak Grove Elementary School District, Ventura Unified School District, Oceanside City Unified School District, Roseville Joint Union High School District, Folsom Cordova Unified School District, Palmdale School District, Moreland Elementary School District, Novato Unified School District, Modesto City Schools, San Benito Union High School District, Manteca Unified School District, El Monte Elementary School District, Las Virgenes Unified School District, Del Norte County Unified School District, Glendale Unified School District, Garden Grove Unified School District, San Lorenzo Unified School District, Lompoc Unified School District, Mojave Unified School District, Lodi Unified School District, San Juan Unified School District, Los Altos Elementary School District, Salinas Union High School District, Los Angeles County Office of Education, Morgan Hill Unified School District, Fairfield-Suisun Unified School District, Ojai Unified School District, Bellflower Unified School District, Berryessa Union School District, Livingston Union School District, Whittier Union High School District, Claimants  
Education Code Section 35160.5  
Statutes 1983, Chapter 498 (SB 813)

Cathy Cruz, Program Analyst, presented this item. She indicated that this item addressed the incorrect reduction claims filed by 38 county offices of education and school districts, and noted that section 1185(c) of the Commission's regulations permit analyses of incorrect reduction claims filed by different local entities to be combined if the claims contain similar issues. Here, all 38 claimants contended that the State Controller incorrectly reduced their claims for the cost of training probationary teachers and argued that the cost should be reimbursed because it was authorized by the parameters and guidelines under the Probationary Certificated Employee Policies component of the program. While these claims were grouped for purposes of analysis, Ms. Cruz stated that a separate statement of decision would be issued for each incorrect reduction claim.

Ms. Cruz explained the State Controller's position that the parameters and guidelines do not provide reimbursement for the cost of salaries and wages for probationary teachers to attend training. In lieu of that, the State Controller stated that the parameters and guidelines provide reimbursement for the cost of substitute teachers.

Ms. Cruz outlined the two issues for consideration by the Commission:

- 1) Is the cost of salaries and benefits for probationary teachers receiving additional training outside their regular workday or work year a reimbursable cost under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program?

Staff found that the Commission intended that probationary teacher training be provided during the regular school day when a substitute teacher could be hired. Ms. Cruz stated that there was no evidence in the record to support the claimants' contention that the additional training provided outside the regular school year was mandated by this program.

- 2) Is the cost of salaries and benefits for probationary teachers attending training and mentoring during the course of their regular workday a reimbursable cost under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program?

Staff found that school districts do not incur increased costs mandated by the state when probationary teachers attend training and mentoring during the course of their regular workday because this time is absorbed into the school day. Ms. Cruz noted that, instead, the parameters and guidelines provide reimbursement for the costs of substitute teachers so that probationary teachers could attend training activities.

Staff concluded that the State Controller's Office did not incorrectly reduce the claimants' reimbursement claims and recommended that the Commission deny all 38 incorrect reduction claims.

Parties were represented as follows: David Scribner, representing the claimants; Shawn Silva, for the State Controller's Office; and Michael Wilkening, for the Department of Finance.

Mr. Scribner stated that the parameters and guidelines for this mandate were inartfully drafted. He argued that staff had not put forth any documents to show that probationary teachers must be substituted while they attend training, and thus, he maintained that training probationary teachers outside the school day was a reasonable method to comply with the mandate. He noted that the claiming instructions did not specify that districts were required to use substitutes, but provided for the costs to train, assist, and evaluate probationary teachers over and above that provided to permanent teachers.

Mr. Silva concurred with the staff analysis.

Mr. Wilkening concurred with the State Controller's Office.

Member Lazar requested staff to comment. Ms. Cruz explained that section 1183.1 of the Commission's regulations require that a successful test claimant submit proposed parameters and guidelines to the Commission describing the specific costs and types of costs that were reimbursable, and the most reasonable methods of complying with the mandate. She added that if claimants disputed the parameters and guidelines, they may request the Commission to amend them pursuant to section 1183.2 of the regulations. She noted that there had been no request to amend the parameters and guidelines for this program.

Ms. Cruz reiterated that the parameters and guidelines provided reimbursement for the costs of substitute teachers, but not for teacher stipends to attend training outside the regular school day. Neither the school day nor the school year increased as a result of the test claim legislation and there was no showing that the state mandated an increased level of service on school districts. She stated that there was no evidence in the record to support the claimant's contention that the state mandated additional training to be provided outside the school day or school year. Thus, she asserted that if school districts chose to increase the school day or provide training outside the regular school year, they did so at their own discretion.

Mr. Scribner strongly disagreed. He stated that the claimants were not aware of a problem in the parameters and guidelines until the State Controller reduced reimbursement claims.

Paul Starkey, Chief Legal Counsel, commented that when looking at the language of a statute, staff looks at the relationship of the words within the sentence, which is the standard rule of statutory construction. He noted that in looking at all of the sentences in context, staff's recommendation appeared to be the correct one.

Member Sherwood made a motion to adopt the staff recommendation. With a second by Member Williams, the motion carried unanimously.

Item 7            *Certification of Teacher Evaluator's Demonstrated Competence*  
99-4136-I-03  
Manhattan Beach Unified School District, Claimant  
Education Code Section 35160.5  
Statutes 1983, Chapter 498 (SB 813)

Cathy Cruz, Program Analyst, presented this item. She noted that this item addressed the incorrect reduction claim filed by the Manhattan Beach Unified School District, who contended that the State Controller incorrectly reduced its claim for the cost of training probationary teachers. The claimant argued that the cost should be reimbursed because it was authorized by the parameters and guidelines under the Probationary Certificated Employee Policies component of the program. The State Controller's position was that the parameters and guidelines did not provide reimbursement for the cost of salaries and wages for probationary teachers to attend training. In lieu of that, the parameters and guidelines provided reimbursement for the cost of substitute teachers.

Ms. Cruz noted that the two issues for consideration by the Commission were identical to the issues presented in the previous item. Staff concluded that the State Controller's Office did not incorrectly reduce the claimant's reimbursement claim and recommended that the Commission deny this incorrect reduction claim.

Parties were represented as follows: Keith Petersen, representing Manhattan Unified School District; Carol Berg, with Education Mandated Cost Network; Shawn Silva, for the State Controller's Office; and Michael Wilkening, for the Department of Finance.

Mr. Petersen pointed out that the test claim legislation required that each local government district establish their own training program using reasonable methods, which allowed for maximum flexibility, as all school districts were not the same. He stated that the parameters and guidelines should have been amended, but the program was repealed six years ago. Regarding staff's position that the parameters and guidelines provided reimbursement for substitute teachers, he asserted that this would cost the state more money if the program were still in effect today. In addition, although he agreed that there was no evidence in the record to support the claimant's contentions, he argued that there was also no evidence the other way. Thus, he stated that it was a very weak tool of construction to rely on this argument.

Mr. Silva supported staff's conclusion.

Mr. Wilkening concurred with the State Controller. In addition, he disagreed with Mr. Petersen's comment that reimbursement of substitute teachers would cost the state more money.

Ms. Berg commented that the district implemented additional days for training, but did not add additional days of pay to the probationary teachers' work year. Their annual salary was standardized, and therefore, she stated that the most costly way to implement this program was to pay for substitute teachers.

Member Williams made a motion that was seconded by Member Sherwood, to adopt the staff recommendation. The motion carried 4 – 1, with Member Lazar voting "No."

#### PROPOSED STATEMENT OF DECISION - INCORRECT REDUCTION CLAIM

Item 8      *Graduation Requirements*, 4435-I-09  
Lompoc Unified School District, Claimant  
Education Code Section 51225.3  
Statutes 1983, Chapter 498 (SB 813)

Item 8 was postponed.

#### INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

#### ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES

Item 9      *School Bus Safety II*, 02-PGA-01  
Legislature, Requestor  
Education Code Sections 38048, 39831.3, and 39831.5, and  
Vehicle Code Section 22112  
Statutes 1992 Chapter 624 (AB 3144)  
Statutes 1994 Chapter 831 (SB 2019)  
Statutes 1996, Chapter 277 (SB 1562)  
Statutes 1997, Chapter 739 (AB 1297)  
Statutes 2002, Chapter 1167 (AB 2781)

Nancy Patton, Staff Services Manager, presented this item. She noted that on January 25, 2001, the Commission adopted a statewide cost estimate of \$290 million for the *School Bus Safety II* program. This estimate was reported to the Legislature and included in the Governor's proposed budget. Due to the extraordinary amount of the estimate, Senate Bill 348, enacted on October 11, 2001, required the State Auditor to audit the program. On March 28, 2002, the Bureau of State Audits issued its audit report, recommending, among other things, that "the Commission work with the Controller, other affected state agencies, and interested parties to make sure that the language in the parameters and guidelines and claiming instructions reflect the Commission's intentions, as well as the Controller's expectations regarding supporting documentation." Subsequently, Statutes 2002, chapter 1167 (Assembly Bill 2781), enacted on September 30, 2002, directed the Commission to amend the parameters and guidelines to delete the activity of implementing transportation plans and to detail the documentation necessary to support reimbursement claims.

Staff recommended that the Commission approve the proposed amendments to the parameters and guidelines.

Parties were represented as follows: Keith Petersen, representing Clovis Unified School District; David Scribner, with Spector, Middleton, Young & Minney; Shawn Silva, for the State Controller's Office; Pamela Stone and Allan Burdick, for the California State Association of

Counties; Karen McKenna, for the Bureau of State Audits; Juan Sanchez, for the Department of Education; and Susan Geanacou, for the Department of Finance.

Mr. Petersen noted that the Legislature could clearly create a program or remove a program. However, unless it was funding the original mandate on the original legislation, the Legislature did not have the constitutional authority to decide whether or not the transportation plan and its implementation are reimbursable. He maintained that the Commission was required by law to make all determinations of law and fact regarding whether or not an activity was reimbursable, and that the legislative power was limited to removing the transportation safety plan from the law, which was not done. He further argued that if the Commission thought the Legislature was in a position to determine whether an activity was reimbursable, the next legal issue was whether their power extends retroactively going back five years. He indicated that the Commission's regulations state that the effective date of a parameters and guidelines amendment begins the year the request was filed. Therefore, he asserted that this amendment should be effective fiscal year 2001-2002, 2002-2003.

Mr. Petersen noted that the court could order the Commission to make a new decision based on new information, but it could not change the Commission's prior decision. Therefore, he argued that the Commission should be conducting a test claim hearing, a quasi-judicial procedure finding, to determine whether the transportation safety plan and its implementation are reimbursable.

In addition, Mr. Petersen noted several mechanical problems with the proposed amendments to the parameters and guidelines. First, he stated that claimants can be requested to re-file five years worth of reimbursement claims to remove costs associated with the transportation safety plan. However, he argued that Government Code sections 17560 and 17561 only allow claims to be amended up to one year after the initial filing date, and thus, there was no law that allowed claimants to re-file those five years. He noted that although the State Controller's Office had jurisdiction to audit the filed claims and remove those costs, it would subsequently result in incorrect reduction claims with the issue being that the Controller did not have jurisdiction to make the adjustment since the Legislature did not have jurisdiction to order the change. Other mechanical problems mentioned by Mr. Petersen included the change in the record retention period in case of an audit, the change in the threshold dollar amount for filing reimbursement claims, and the need for an indication of the old and new statute of limitations.

Regarding the proposed supporting documentation language, Mr. Petersen asserted that it was not reasonable to expect claimants to have supporting documentation when a test claim usually was not approved for six or seven years. He noted that three years was perceived as a reasonable period. He added that the Commission should maintain a uniform, or at least consistent, standard for documentation and evidence on parameters and guidelines. He suggested that the proposal be taken back for more work.

Chairperson Miyashiro requested that Mr. Starkey respond to Mr. Petersen's assertion regarding the Legislature's jurisdiction. Mr. Starkey explained that the Commission was not in a position to declare a statute passed by the Legislature, which is presumed to be valid, to be unconstitutional. Rather, it was in the purview of the courts to make that declaration. The Commission is bound to follow the Legislature's direction, and he believed that staff did what the Legislature required. He noted that there was a letter of support from the State Auditor in the record.

Mr. Scribner concurred with Mr. Petersen's comments. He also provided comments regarding the language. Specifically, he argued that reimbursement claims were filed on an annual basis, and thus, staff's attempt to define actual cost and source documents to being created "at or near the event" required further clarification to avoid problems with interpretation.

Ms. Stone supported Mr. Petersen's comments.

Mr. Burdick noted that parameters and guidelines were based on the Commission's statements of decision and that the activity related to transportation plans was found to be reimbursable in the Commission's decision for this program. He argued that the only way a statement of decision could be changed was if a major error of law was shown, which had not happened here. He added that the courts said on numerous occasions to disregard what the Legislature said. Therefore, he recommended that the item be postponed and that a prehearing conference be scheduled.

Mr. Silva concurred with the staff analysis and had no comments regarding the proposed amendments.

Member Lazar asked what the feasibility was of postponing this item. Ms. Higashi responded that it was the Commission's decision. Mr. Starkey commented that the item before the Commission was based on the statute, and was lawful and valid. He stated his belief that the Commission had jurisdiction to move forward.

Member Barnes acknowledged the sensitivity associated with this particular program, but pointed out that all mandates originated from legislation. He noted that this was not the first time the Commission amended parameters and guidelines without revising statements of decision. He stated that moving forward with this item would in no way indicate that the Commission was losing its jurisdictional authority and that the mechanical problems mentioned by Mr. Petersen should not delay adoption of the proposed amendments.

Chairperson Miyashiro requested that representatives from the Legislative Analyst's Office, Bureau of State Audits, or Department of Finance comment on whether the proposed amendments to the parameters and guidelines satisfied the requirements of Assembly Bill 2781. Ms. McKenna, with the Bureau of State Audits, stated that their recommendation that the Legislature amend the parameters and guidelines through legislation to clearly specify what was reimbursable and to clarify what the Legislature intended had been complied with. She added that this recommendation was based on statute that allowed the Legislature to amend the parameters and guidelines.

Mr. Sanchez commented that the proposed changes were consistent with the Bureau of State Audits' findings.

Ms. Geanacou stated that the proposed changes were consistent with the requirements of Assembly Bill 2781.

Ms. Higashi reported that she had contacted the Legislative Analyst's Office but they could not be here. Mr. Burdick maintained that unless the Legislature could show that an error in law was made or unless it was ordered by the court, the Legislature could not amend parameters and guidelines if the proposed amendment was inconsistent with the Commission's statement of decision.

Mr. Petersen commented that the state agencies' satisfaction with the proposed amendments did not provide any conclusion as to the process, the procedure, or the mechanism. He added that as a quasi-judicial body, the Commission was required to take certain steps in making decisions for the public. He also stated his belief that the Commission staff had not provided a legal opinion.

Mr. Scribner argued that the Legislature did not remove transportation safety plans from the statute, but rather chose to tell the Commission to remove reimbursement. He reiterated that the courts have said on numerous occasions that the Legislature did not have the authority to do this.

Mr. Starkey maintained that he was providing a legal opinion based on consideration of the issues by staff. He explained that the Legislature passed a statute with due deliberation and with opportunity for public input and review by Legislative Counsel. That statute is presumed valid unless the court says otherwise. He indicated that the Legislature made the scheme for mandates, and this was an amendment to that statutory scheme. If it is challenged, he asserted that that court would decide whether or not the issues have merit. Therefore, he stated that the Commission could move forward.

Member Sherwood indicated that his tendency was to follow the direction of the Legislature. Member Lazar stated his belief that there seemed to be an opportunity to work out some issues. Chairperson Miyashiro asked what issues would be evaluated if this item were postponed. Mr. Starkey responded that the record would be reviewed, including all of this testimony, to see if there was anything to provide any other direction to the Commission. However, Mr. Starkey cautioned that this was done before the item was presented and the issues being raised were not new.

Member Barnes stated that he did not hear any issues that would benefit from postponing the item. Therefore, he made a motion that was seconded by Member Sherwood, to adopt the staff recommendation. The motion carried 4 – 1, with Member Lazar voting “No.”

[At this time, a short break was taken.]

#### STATEWIDE COST ESTIMATE

Item 12      *Standardized Testing and Reporting, 97-TC-23*  
San Diego Unified School District, Claimant  
Education Code Sections 60607, Subdivision (a), 60609,  
60615, 60630, 60640, 60641, and 60643  
Statutes 1997, Chapter 828 (SB 376)  
California Code of Regulations, Title 5, Sections 850-904

Nancy Patton, Staff Services Manager, presented this item. She noted that the proposed statewide cost estimate was originally presented at the October 2002 hearing, but the Department of Finance requested that the item be continued to allow them time to review the reimbursement claims. In a letter dated December 23, 2002, the Department of Finance stated that the claims they reviewed lacked the necessary detail to determine how general duties could amount to a cost estimate of \$184 million. They also expressed concern about the variability in per pupil costs. Thus, the Department of Finance recommended that the proposed statewide cost estimate not be adopted.

Ms. Patton noted that Government Code section 17600 requires the Commission to report to the Legislature the number of mandates it has found and an estimated statewide cost for each. She stated that this was only an estimate of the costs of the program, and that the State Controller

may audit the claims and reduce them if they are found to be excessive or unreasonable, or if they fail to include offsetting savings.

Staff recommended that the Commission adopt the proposed statewide cost estimate of \$184 million, or \$23.5 million per year for the seven fiscal years included in the estimate.

Parties were represented as follows: Art Palkowitz, representing San Diego Unified School District; Pamela Stone and Allan Burdick, with California State Association of Counties; and Michael Wilkening and Blake Johnson, for the Department of Finance.

Mr. Palkowitz agreed with the staff estimate.

Mr. Johnson argued that the claims lacked detail and the detail that was provided was problematic. He noted that some of the items being claimed were not required to comply with the mandate. Therefore, the Department of Finance recommended that the Commission not adopt the proposed statewide cost estimate.

To distinguish the Department of Finance's comments versus the requirement that the Commission submit a cost estimate to the Legislature, Chairperson Miyashiro requested that the Department of Finance clarify their position. Mr. Wilkening agreed that the Commission had to present a number to the Legislature, but asserted that the estimate should be based on a rationale.

Member Barnes commented that there was no specific indication for determining an estimate. He stated that currently, the estimates are taken from a summary of reimbursement claims that are filed. Ms. Higashi affirmed and added that staff did not have audited data. She noted that in order to trigger an appropriation, a number had to be reported to the Legislature. If the Commission underestimates the cost of mandates, deficiencies would continue into the future, and if the Commission overestimates, the Legislature had the authority to determine how to proceed.

Chairperson Miyashiro asked what consequences or benefits there would be if an attempt to refine the estimate was made. Ms. Higashi maintained that it was difficult to know how to proceed because the State Controller had the jurisdiction, exercised through their audit authority, to decide whether reimbursement claims were overclaimed or underclaimed. She stated that it would be helpful if the Department of Finance could propose an estimate that they thought was more appropriate. Mr. Wilkening reiterated that there was not enough detail in the claims to develop a more appropriate estimate. He added that there was no basis for staff's assertion that the current proposal was correct. Ms. Higashi responded that the claim forms filed with the State Controller were certified by local entities.

Mr. Palkowitz requested clarification from the Department of Finance regarding their assertion that the claims "lacked detail." Mr. Wilkening stated that some of the claims included inappropriate items and were not supported by documentation. Mr. Palkowitz argued that there was no requirement to include source documents with the filings. He pointed out that the claims were all certified to be accurate and correct and reiterated that this was only an estimate to trigger an appropriation in the budget.

Ms. Stone explained that the process in effect, although imperfect, worked far better than the prior process, in which the Executive Director polled various entities to determine an estimate. She noted that the claims filed with the State Controller were not audited, and also did not take into account any late claims that may be filed or any possible audit after an appropriation is made. She reiterated that this was merely an estimate.

Member Lazar made a motion that was seconded by Member Williams, to adopt the staff recommendation.

Member Sherwood commented that the questions raised about the lack of documentation would be better answered by a member of the State Controller's Office who dealt with them on a day-to-day basis. He added that he did not know how the Commission would proceed in adopting estimates if the claims data that was before the Commission was not used.

Member Barnes stated that he understood the Department of Finance's reluctance. However, he reiterated that although flawed, there was a process in place. He suggested that the issue be recognized and dealt with, but not in this situation.

Mr. Burdick reminded the Commission that this was their estimate and that the Legislature had the authority to make adjustments later, if necessary.

Ms. Higashi noted that the Commission had been criticized in the past for not promptly presenting a statewide cost estimate while the Legislature was still in session.

Chairperson Miyashiro stated that the Commission and staff should make every effort to provide an accurate cost estimate to the Legislature. He suggested that the data on which the estimates are based be refined. Member Barnes clarified that the claims received in the State Controller's Office were in accordance with the claiming instructions. He noted that just because the estimate was high did not necessarily make it incorrect. He suggested that the problem was the process, not the data, and that it should be addressed.

The motion to adopt the staff recommendation carried unanimously.

**RULEMAKING, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)**

Item 13      Petition for Rulemaking: Cost Accounting Principles, Practices,  
and Procedures  
Sixten & Associates, Petitioner

Shirley Opie, Assistant Executive Director, presented this item. She indicated that any person may file a petition with the Commission to request a rulemaking hearing. The Commission must either deny or grant the request within 60 days from the date the petition was filed. She noted that on December 6, 2002, a petition was received from Mr. Keith Petersen, which detailed principles of reimbursement; time and form for filing claims and amended claims; the State Controller's acceptance and audit of claims; the State Controller's payment of claims; procedures to object to the State Controller's actions on claims; cost accounting principles; and record keeping for costs to be reimbursed.

Staff recommended that the Commission deny the petition based on the grounds that the Commission does not have the authority to adopt regulations governing the State Controller's administrative process for receiving, auditing, and paying reimbursement claims. In addition, the Commission's regulations provide a means for claimants to appeal the State Controller's actions on reimbursement claims by filing incorrect reduction claims and requests to review claiming instructions with the Commission.

Parties were represented as follows: Keith Petersen, representing Sixten and Associates; Allan Burdick, with California State Association of Counties; and Shawn Silva, for the State Controller's Office.

Mr. Petersen stated that there were important issues that the Commission's existing regulations do not resolve. He noted that parties have attempted for years to come to agreement on issues, but without success. Therefore, he asked that the Commission move forward with this petition and make decisions on the issues that interested parties cannot agree upon.

Mr. Burdick commented that there was a need for clarification and ensuring that everyone is in agreement. Regarding the Commission's jurisdiction, he stated his belief that since the Commission issues decisions on what is claimable, it should also be able to comment on what documentation should accompany claims. He also urged the Commission to move forward with the petition.

Chairperson Miyashiro asked Mr. Silva if he agreed with the staff analysis regarding the Commission's authority to set rules for the State Controller's Office. Mr. Silva agreed with the staff analysis.

Member Williams made a motion to adopt the staff recommendation. With a second by Member Sherwood, the motion carried unanimously.

## **EXECUTIVE DIRECTOR'S REPORT**

### **Item 15      Workload, Legislation, Next Agenda**

Ms. Higashi noted the following:

- *Personnel.* Patricia Rinaldi and Julie Shelton are leaving the Commission and were acknowledged and thanked for their service.
- *Legislation.*
  - A. Governor's Proposed Budget. The Commission has a reduction of \$98,000 proposed for current year and a reduction of \$318,000 proposed for the budget year. Regarding mandate reimbursement reductions, all of the local agency mandates were reduced to almost nothing, but there are some appropriations for the education mandates.
  - B. Local Government Claims Bill. There was no local claims bill last year, and there may not be one this year.
  - C. Assembly Constitutional Amendment No. 6. This amendment has been introduced and deals with mandate issues.
  - D. State Controller's AB 3000 Report. This report, which details appropriations in prior claims bills, budget acts, and the total amount of claims paid and deficiencies for each program, was recently issued.
- *Future Hearing Agendas.* The *Standardized Account Code Structure* test claim postponed from this month will be scheduled for the February hearing.

## **CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526.**

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126, subdivision (e)(1):

1. *San Diego Unified School District and San Juan Unified School District v. Commission on State Mandates, et al.*, Case Number 00CS00810, in the Superior Court of the State of California, County of Sacramento.  
CSM Case No. 01-L-04 [*Physical Performance Tests*]
2. *City of San Diego v. Commission on State Mandates, et al.*, Case Number D039095 in the Appellate Court of the State of California, Fourth Appellate District, Division 1. CSM Case No. 01-L-15 [*Special Use; Eminent Domain*]
3. *County of San Diego v. Commission on State Mandates, et al.*, Case Number D039471, in the Appellate Court of the State of California, Fourth Appellate District, Division 1. CSM Case No. 01-L-16 [*San Diego MIA*]
4. *County of Los Angeles v. Commission on State Mandates, et al.*, Case Number B156870, in the Appellate Court of the State of California, Second Appellate District. CSM Case No. 01-L-17 [*Domestic Violence*]
5. *County of San Bernardino v. Commission on State Mandates, et al.*, Case Number B158835, in the Appellate Court of the State of California, Second Appellate District. CSM Case No. 01-L-18 [*SEMS*]
6. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Case Number 02CS00994, in the Superior Court of the State of California, County of Sacramento. CSM Case No. 02-L-01 [*School Bus Safety II*]
7. *San Diego Unified School District v. Commission on State Mandates, et al.*, Case Number S109125, in the Supreme Court of the State of California.  
CSM Case No. 02-L-02 [*Pupil Expulsions*]
8. *State of California, Department of Finance v. Commission on State Mandates, Kern Union High School District; San Diego Unified School District, County of Santa Clara*, Case Number S109219, in the Supreme Court of the State of California.  
CSM Case No. 02-L-03 [*School Site Councils*]
9. *County of San Bernardino v. Commission on State Mandates of the State of California, et al.*, Case Number B163801, in the Appellate Court of the State of California, Second Appellate District.  
CSM Case No. 02-L-04 [*Property Tax Administration*]

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

- Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd. (e)(2)(B)(i).)

#### PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a), and 17526.

Discussion and action, if appropriate, on report from the Personnel Sub-Committee.

Hearing no further comments, Chairperson Miyashiro adjourned into closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; and Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

#### **REPORT FROM CLOSED EXECUTIVE SESSION**

Chairperson Miyashiro reported that the Commission met in closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; and Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

#### **ADJOURNMENT**

Hearing no further business and upon motion by Member Williams and second by Member Sherwood, Chairperson Miyashiro adjourned the meeting at 12:50 p.m.

  
PAULA HIGASHI  
Executive Director

## **BROWN ACT REFORM**

Statewide Cost Estimate  
Adopted: January 23, 2003

Government Code Sections 54952, 54954.2, 54954.3, 54957.1, and 54957.7

Statutes 1986, Chapter 641  
Statutes 1993, Chapters 1136, 1137 and 1138

### **Mandate Background**

The test claim legislation expanded the types of “legislative bodies” required to comply with the notice and agenda requirements of the Ralph M. Brown Act, and required all “legislative bodies” of local agencies and school districts to perform a number of additional activities in relation to the closed session requirements of the Brown Act.

The City of Newport Beach filed the *Brown Act Reform* test claim on December 29, 1994. The Commission adopted the Statement of Decision on June 28, 2001, and the parameters and guidelines on April 25, 2002. The parameters and guidelines for *Brown Act Reform* were combined with the parameters and guidelines previously adopted for the *Open Meetings Act*. Beginning in Fiscal Year (FY) 2001-02, claimants may use a unit cost to file combined claims for both acts. However, the parameters and guidelines specify that claimants may not file previously claimed *Open Meetings Act* costs under the new combined parameters and guidelines.

Eligible claimants were required to file initial reimbursement claims with the State Controller’s Office (SCO) by October 1, 2002. The SCO provided the unaudited actual claim totals to the Commission on December 4, 2002. The claims data was used to develop a statewide cost estimate that was issued on December 9, 2002. It included seven fiscal years for a total of \$22,836,000.

In this revised proposed statewide cost estimate, staff excluded FY 2001-02 costs for the *Open Meetings Act* program for purposes of estimating only *Brown Act Reform* costs. The revised proposed statewide cost estimate for seven fiscal years is \$8,834,000 for *Brown Act Reform*.

### **Eligible Claimants**

Any county, city, a city and county, school or special district that incurs increased costs as a result of this reimbursable state mandated program is eligible to claim reimbursement of those costs.

### **Period of Reimbursement**

Costs incurred on or after January 1, 1994 are eligible for reimbursement. Initial years’ costs shall not include any costs that were claimable or reimbursed pursuant to *Open Meetings Act* parameters and guidelines as amended on December 4, 1991 or November 30, 2000. Reimbursement for these costs must be claimed as prescribed in the Controller’s Claiming Instructions No. 2000-15 and 2000-16 for local agencies and schools, respectively.

Annual claims, commencing with the 2001-2002 fiscal year, shall include all costs for *Open Meetings Act* and *Brown Act Reform*.

### Reimbursable Activities

As stated previously, these parameters and guidelines include activities for both the *Open Meetings Act* and *Brown Act Reform* test claims. The new eligible claimants and activities related to *Brown Act Reform* are shown below in underline. These are the only activities for which this statewide cost estimate was developed.

For each eligible claimant, the following activities are eligible for reimbursement:

#### A. Agenda Preparation and Posting Activities

1. Prepare a single agenda for a regular meeting of a legislative body of a local agency or school district containing a brief description of each item of business to be transacted or discussed at a regular meeting, including items to be discussed in closed session, and citing the time and location of the regular meeting.<sup>1</sup> (Gov. Code, § 54954.2, subd. (a).)
2. Post a single agenda 72 hours before a meeting in a location freely accessible to the public. Further, every agenda must state that there is an opportunity for members of the public to comment on matters that are within the subject matter jurisdiction of the legislative body, subject to exceptions stated therein. (Gov. Code, §§ 54954.2, subd. (a), and 54954.3, subd. (a).)

Beginning January 1, 1994, the following types of “legislative bodies” are eligible to claim reimbursement under these parameters and guidelines for the activities listed in section IV.A:

- Local Bodies created by state or federal statute.
- Standing Committees with less than a quorum of members of the legislative body that has a continuing subject matter jurisdiction or a meeting schedule fixed by formal action.
- Permanent & Temporary Advisory Bodies (except bodies of less than a quorum of the members of the legislative body).

Beginning January 1, 1994, the following “legislative bodies” are eligible to claim reimbursement under these parameters and guidelines for the preparation of a brief general description of closed session agenda items, using either the actual or standard time reimbursement options pursuant to section V.A.1 or 2:

- Governing board, commission, directors or body of a local agency or any board or commission thereof, as well as any board, commission, committee, or other body on which officers of a local agency serve in their official capacity.
- Any board, commission, committee, or body, which exercises authority, delegated to it by the legislative body.

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<sup>1</sup> As amended by Statutes 1993, chapter 1136.

- Planning commissions, library boards, recreation commissions, and other *permanent* boards or commissions of a local agency composed of at least a quorum of the members of the legislative body.
- Local Bodies created by state or federal statute.
- Standing Committees with less than a quorum of members of the legislative body that has a continuing subject matter jurisdiction or a meeting schedule fixed by formal action.
- Permanent & Temporary Advisory Bodies (except bodies of less than a quorum of the members of the legislative body).

B. Closed Session Activities

1. Disclose in an open meeting, prior to holding any closed session, each item to be discussed in the closed session. (Gov. Code, § 54957.7, subd. (a).)
2. Reconvene in open session prior to adjournment to make any disclosures required by Section 54957.1 of action taken in the closed session, including items as follows: (Gov. Code, § 54957.7, subd. (b).)
  - a. Approval of an agreement concluding real estate negotiations as specified in Section 54956.8. (Gov. Code, § 54957.1, subd. (a)(1).)
  - b. Approval given to its legal counsel to defend, or seek or refrain from seeking appellate review or relief, or to enter as an amicus curiae in any form of litigation as the result of consultation under Section 54956.9. (Gov. Code, § 54957.1, subd. (a)(2).)
  - c. Approval given to its legal counsel of a settlement of pending litigation as defined in Section 54956.9, at any stage prior to or during a judicial or quasi-judicial proceeding shall be reported after the settlement is final. (Gov. Code, § 54957.1, subd. (a)(3).)
  - d. Disposition reached as to claims discussed in closed session pursuant to Section 54956.95 shall be reported as soon as reached in a manner that identifies of the name of the claimant, the name of the local agency claimed against, the substance of the claim, and any monetary amount approved for payment and agreed upon by the claimant. (Gov. Code, § 54957.1, subd. (a)(4).)
  - e. Approval of an agreement concluding labor negotiations with represented employees pursuant to Section 54957.6 shall be reported after the agreement is final and has been accepted or ratified by the other party. (Gov. Code, § 54957.1, subd. (a)(6).)

3. Provide copies of any contracts, settlement agreements, or other documents that were finally approved or adopted in the closed session to a person who submitted a written request within the timelines specified or to a person who has made a standing request, as set forth in Sections 54954.1 or 54956 within the time lines specified. (Gov. Code, § 54957.1, subd. (b) and (c).)
4. Train members of only those legislative bodies that actually hold closed executive sessions, on the closed session requirements of *Brown Act Reform*. If such training is given to all members of the legislative body, whether newly appointed or existing members, contemporaneously, time of the trainer and legislative members is reimbursable. Additionally, time for preparation of training materials, obtaining materials including training videos and audio visual aids, and training the trainers to conduct the training is reimbursable. See Section V.B.6 of these parameters and guidelines.

Beginning January 1, 1994, the following “legislative bodies” are eligible to claim reimbursement under these parameters and guidelines for the activities listed in IV.B:

- Governing board, commission, directors or body of a local agency or any board or commission thereof, as well as any board, commission, committee, or other body on which officers of a local agency serve in their official capacity.
- Any board, commission, committee, or body which exercises authority delegated to it by the legislative body.
- Planning commissions, library boards, recreation commissions, and other *permanent* boards or commissions of a local agency composed of at least a quorum of the members of the legislative body.
- Local Bodies created by state or federal statute.
- Standing Committees with less than a quorum of members of the legislative body that has a continuing subject matter jurisdiction or a meeting schedule fixed by formal action.
- Permanent & Temporary Advisory Bodies (except bodies of less than a quorum of the members of the legislative body).

## Statewide Cost Estimate

Following is a breakdown of estimated total costs per fiscal year:

Fiscal Year	# Of School District Claims Filed With SCO	Amount Claimed by School Districts	# Of City & County Claims Filed With SCO	Amount Claimed by Cities & Counties	Combined Claim Totals
1993-94	87	\$ 92,227	186	\$ 220,584	\$ 312,811
1994-95	111	\$ 193,915	224	\$ 478,851	\$ 672,766
1995-96	117	\$ 214,664	236	\$ 537,543	\$ 752,207
1996-97	130	\$ 230,527	246	\$ 584,256	\$ 814,783
1997-98	120	\$ 212,967	199	\$ 480,821	\$ 693,788
1998-99	129	\$ 223,027	201	\$ 502,170	\$ 725,197
1999-00	133	\$ 258,873	207	\$ 527,577	\$ 786,450
2000-01	145	\$ 381,512	218	\$ 598,250	\$ 979,762
2001-02 (2.7% <sup>2</sup> )	n/a	\$ 391,813	n/a	\$ 614,403	\$1,006,216
2002-03 (2.2% <sup>3</sup> )	n/a	\$ 400,433	n/a	\$ 627,920	\$1,028,353
2003-04 (3.2% <sup>4</sup> )	n/a	\$ 413,247	n/a	\$ 648,013	\$1,061,260
Subtotals		\$3,013,205		\$5,820,388	\$8,833,593
Total					\$8,833,593
Statewide Cost Estimate Total (Rounded)					\$8,834,000

<sup>2</sup> Implicit Price Deflator as forecast by Department of Finance.

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*



## County of Santa Clara

Finance Agency  
Controller-Treasurer Department  
County Government Center, East Wing  
70 West Hedding Street  
San Jose, California 95110  
(408) 299-2541 FAX 289-8629



F A X

TO: Sharlene Steed  
Commission on State Mandates  
FAX (916) 445-0278

FROM: Steve Conrad  
County of Santa Clara

SUBJECT: Test Claim # CSM-4469, Brown Act Reform

The County of Santa Clara hereby requests that the test claim hearing on the above cited matter, scheduled for November 30, 1995, be continued until certain procedural issues can be resolved. Please accept our apologies for any inconvenience this may cause.



## COMMISSION ON STATE MANDATES

1414 K Street, Suite 315  
SACRAMENTO, CA 95814  
(916) 323-3562



October 25, 1995

Mr. Steve Conrad  
SB 90 Coordinator  
70 West Hedding Street  
East Wing, Second Floor  
San Jose, California 95110

RE: CSM-4469  
County of Santa Clara  
Government Code Sections 54952, 54954.2,  
54957.1, and 54957.7  
Chapter 1136, Statutes of 1993  
Chapter 1137, Statutes of 1993  
Chapter 1138, Statutes of 1993  
Chapter 32, Statutes of 1994  
*Brown Act Reform*

Dear Mr. Conrad:

Commission staff received your attached request to continue the hearing of the above cited test claim and is, therefore, continuing the item which was scheduled for the November 30, 1995 hearing. We will forward a notification to all interested parties when a new hearing date has been scheduled.

Sincerely,

A handwritten signature in cursive script that reads 'Sharlene T. Steed'.

SHARLENE T. STEED  
Mandate Consultant

Enclosure: Claimant's continuance request letter

cc: [On following page. Please note that we used an updated version of the mailing list for the Open Meetings claim and ask that you contact us if you are not interested in being on the mailing list and/or if there are any other corrections that need to be made. Thank you.]

- 
- ✓ Mr. Jim Apps, Department of Finance
  - ✓ Mr. Glenn Engle, State Controller's Office
  - ✓ Dr. Carol Berg, Education Mandated Costs Network
  - ✓ Mr. J. Richard Whitmore, California Department of Education
  - ✓ Ms. Patricia Healy, City of Los Angeles
  - ✓ Mr. James B. Lindholm, Jr., County of San Luis Obispo
  - ✓ Mr. Ernie Silva, League of California Cities
  - ✓ Ms. Ann Blackwood, California Special District Association
  - ✓ Mr. Terry Francke, California First Amendment Coalition
  - ✓ Mr. Tom Newton, California Newspaper Publisher's Association
  - ✓ Mr. Bruce Brugmann, Bay Guardian
  - ✓ Mr. Gene Erbin, Assembly Judiciary
  - ✓ Mr. Dan Friedlander, Senator Quentin L. Kopp's Office
  - ✓ Ms. Marcia C. Faulkner, County of San Bernardino
  - ✓ Ms. Carolyn McIntyre, California State Association of Counties
  - ✓ Assemblymember Jack O'Connell
  - ✓ Assemblymember Jackie Speier
  - ✓ Ms. Linda Horning, Assemblymember Bruce McPherson's Office
  - ✓ Mr. Dewey Evans, Monterey City Hall
  - ✓ Mr. Terry Conner, Assemblymember Debra Bowen
  - ✓ Mr. James R. Erickson, City of Milbrae
  - ✓ Mr. Chris Cetti, County of Sacramento
  - ✓ Mr. Paul Abelson, County of Contra Costa
  - ✓ Mr. Bob Jones, County of Fresno
  - ✓ Mr. Richard Stuuts, Assemblymember David Knowles
  - Mr. Clarence Chan, Senator Patrick Johnston
  - ✓ Ms. Teresa Stark, Assemblymember Barbara Lee
  - ✓ Ms. Polly Gardner, Senator Ralph C. Dills
  - ✓ Ms. Betty Anderson, Assemblyman Bill Morrow
  - ✓ Mr. Charles A. Comstock, City of Scotts Valley
  - ✓ Mr. Philip Squire, Downey
  - ✓ Mr. Andy Glass, City of Dana Point
  - ✓ Mr. Fred Sorsabal, City of Mission Viejo
  - ✓ Mr. William Norton, Alameda City Hall
  - ✓ Ms. Phoebe Graubard, Mendocino
  - ✓ Mr. Allan Burdick, DMG & Associates
  - ✓ Mr. David E. Wellhouse, Wellhouse & Associates
- Chargeable Persons:
- ✓ Mr. Leonard Kaye, County of Los Angeles
  - ✓ Mr. Keith Petersen, San Diego Unified School District
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